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and;

Futures Industry Association

Oslo, ~~[ ] 2016~~18 September 2017
Ref:~~M7226998~~
M8021563/1/107301-040/~~CHBA~~JANS
Lawyer in charge:
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LEGAL OPINION

~~[Draft dated 7 October 2016~~

~~Subject to comments from signing partners]~~

Dear Sirs,

LEGAL OPINION CONCERNING THE ENFORCEABILITY OF THE LIQUIDATION, SET-OFF, NETTING AND CREDIT SUPPORT PROVISIONS OF CERTAIN FUTURES ACCOUNT AGREEMENTS AND A CLEARED DERIVATIVES ADDENDUM UNDER NORWEGIAN LAW

1. INTRODUCTION

We refer to your instruction letter dated October 2014 and to the instruction ~~in~~ email from Breda Walsh of 12 September 2016.

We have been requested to provide an updated legal opinion to address the enforceability of the liquidation, set-off, netting and credit support provisions of:

(a) certain Covered Base Agreements (as defined below) entered into by an entity that is registered with the United States Commodity Futures Trading Commission (the "**CFTC**") as a futures commission merchant ("**FCM**") and is a member of one or more CFTC-registered derivatives clearing organizations (each such FCM, a "**Clearing Member**") and such Clearing Member's customer, setting forth the right of such Clearing Member, upon the occurrence of an event giving rise to any right of such Clearing Member to liquidate all Futures Transactions (as defined below), to liquidate such transactions and to determine amounts owing with respect thereto, to exercise remedies in respect of Futures Payment Rights (as defined below) and rights of netting and set-off with respect to obligations arising from Futures Transactions and to apply Futures Credit Support (as defined below) transferred by a customer in connection therewith; and

(b) an addendum for Cleared Derivatives Transactions (a "**CDA**"), entered into by a Clearing Member and such Clearing Member's customer, setting forth the right of such Clearing Member, upon the occurrence of an event giving rise to any right of such Clearing Member to liquidate either (i) all Cleared Derivatives Transactions (as defined below) or (ii) any cleared Derivatives Transactions affected by a Tax Liquidation Event (as defined in the form of cleared Derivatives Addendum published by the FIA and ISDA), under a

Covered Base Agreement, to liquidate such transactions and to determine amounts owing with respect thereto, to exercise remedies in respect of Cleared Derivatives Payment Rights (as defined below) and rights of netting and set-off with respect to obligations arising from Cleared Derivatives Transactions, to apply Cleared Derivatives Credit Support (as defined below) transferred by that customer in connection therewith and to offset obligations arising from Cleared Derivatives Transactions against Cleared Derivatives Credit Support transferred to that customer.

The conclusions reached in this legal opinion apply to the types of Norwegian counterparties listed in Appendix B to this opinion.

2. ASSUMPTIONS

2.1 Assumptions related to the Covered Base Agreements and the CDA

We have not been provided with nor reviewed a Covered Base Agreement, nor a CDA, and have been instructed to base our legal opinion on the following assumptions:

2.1.1 Covered Base Agreements

(i) Pursuant to a futures customer account agreement (a "**Covered Base Agreement**") entered into between a Clearing Member and a customer, the Clearing Member agrees to carry one or more accounts on behalf of that customer (each, an "**Account**") and to execute, carry and clear transactions for the purchase or sale of commodities for future delivery on, or subject to the rules of a derivatives clearing organization (a "**DCO**")[1] registered as such under the United States Commodity Exchange Act (the "**CEA**") or traded on, or subject to the rules of, a board of trade outside the United States (such contracts executed on a contract market designated pursuant to Section 5 of the CEA and cleared by a U.S.-registered DCO, "**U.S Futures**", such contracts traded on or subject to the rules of, a board of trade outside the United States, and options thereon, "**Foreign Futures**" and, collectively "**Futures**") and/or options on U.S. Futures subject to Part 33 of the rules of the CFTC (such contracts, "**Options**", and collectively with Futures, "**Futures Transactions**"). With respect to Foreign Futures, the Clearing Member acts for the customer by carrying Foreign Futures on the customer's behalf with, and guaranteeing the customer's performance to, clearing members ("**Foreign Clearing Members**") of the relevant foreign clearinghouses, which Foreign Clearing Members may frequently be affiliates of the Clearing Member, and the Foreign Clearing Members will, in turn, enter into back-to-back futures transactions cleared by foreign clearinghouses.

(ii) Each Covered Base Agreement is governed by New York law.

(iii) Pursuant to a Covered Base Agreement, the customer agrees to transfer, as applicable, initial margin and variation margin payments as the Clearing Member may require in respect of the customer's Futures Transactions. Also, pursuant to the Covered Base Agreement, the customer grants a security interest to the Clearing Member in all of the customer's rights in the following property, whether at the time of the grant or thereafter existing, and the proceeds of those rights:

(A) "Futures Credit Support" including:

(1) With respect to U.S. Futures and Options, its Account and all assets credited thereto, including assets held by a DCO, as well

[1] We do not know the identity of the relevant DCOs and have for the purposes of this legal opinion not reviewed any DCO rulebooks.

as other property of the customer held in respect of Futures Transactions by or for the Clearing Member, the DCO or any agent acting for the Clearing Member, the DCO or the customer;

(2) With respect to Foreign Futures, its Account and all assets credited thereto, including assets held by a Foreign Clearing Member or foreign clearinghouse, as well as other property of the customer held in respect of Futures Transactions by or for, or for the Account due from, the Clearing Member, any Foreign Clearing Member, any foreign clearinghouse or others, any agent acting for the Clearing Member, any Foreign Clearing Member, any foreign clearinghouse or others; and

(B) "Futures Payment Rights", including:

(1) With respect to U.S. Futures and Options, its Futures Transactions and all rights to payment thereunder (whether constituting obligations of the Clearing Member or a DCO);

(2) With respect to Foreign Futures, its Futures Transactions and all rights to payment thereunder (whether constituting obligations of the Clearing Member, a Foreign Clearing Member or a foreign clearinghouse).

The security interest secures all obligations of the customer to the Clearing Member under the Covered Base Agreement.

(iv) A Covered Base Agreement contains one or more events of default (whether or not described therein as "events of default") (each, an "**Event of Default**") the effect of which is to give the Clearing Member the right to liquidate (and thereby terminate) the Futures Transactions held in the customer's Account ("**Futures Liquidation Rights**"). Among such Events of Default are defaults predicated on (A) a customer's filing under applicable bankruptcy or similar insolvency laws, (B) the filing of a petition for the commencement of involuntary proceedings in respect of the customer's under applicable bankruptcy or similar insolvency laws which filing results in a judgment of insolvency or bankruptcy or an order for relief and (C) the appointment in respect of the customer's or substantially all of its assets of an administrator, conservator, receiver or similar official, including the possession and control of the property of the customer by such an official pursuant to seizure orders. The terms of the Covered Base Agreement provide the Clearing Member with the right as a secured party to exercise remedies in respect of Futures Payment Rights and to net and set off amounts owing under Futures Transactions on account of their liquidation and termination (collectively, "**Futures Netting Rights**").

(v) The Covered Base Agreement includes a provision the effect of which is to permit the Clearing Member, upon the occurrence of an Event of Default in respect of a customer, to dispose of or realize on all Futures Credit Support posted by the customer to the Clearing Member in respect of Futures Transactions and net or apply the foregoing or the liquidation value thereof to any obligations to the customer owes to the Clearing Member under the Covered Base Agreement. We refer to the foregoing collectively as "**Futures Credit Support Rights**".

A futures account agreement that does not alone satisfy the above requirements is nevertheless a "Covered Base Agreement" to the extent it is paired with a CDA that supplies any of the otherwise unsatisfied requirements.

2.1.2 The CDA

(i) In addition to entering into a Covered Base Agreement with the customer, the Clearing Member and the customer execute the CDA. The CDA supplements a Covered Base Agreement with respect to, among other things, the liquidation, and netting of "**Cleared Derivatives Transactions**" carried in the customer's account holding Cleared Derivatives Transactions (the "**Cleared Derivatives Account**"), as well as the application of collateral related to those Cleared Derivatives Transactions. "**Cleared Derivatives Transactions**" are swaps, forwards, options, or similar transactions (but excluding Futures Transactions executed on or subject to the rules of a U.S. designated contract market or on a foreign board of trade and subject to regulation in that jurisdiction) that are (a) entered into by a customer in the over-the-counter market, or (b) executed or traded by such customer on or subject to the rules or protocols of any multilateral or other trading facility, system or platform, including any communication network or auction facility permitted under applicable law or any designated contract market and, in either case, subsequently submitted to and accepted for clearing by a DCO and subject to the CFTC's Part 22 rules. To the extent that a security-based swap is, in accordance with applicable law, carried by an FCM in a cleared swaps customer account (as defined in the CFTC's Part 22 rules), such security-based swap constitutes a Cleared Derivatives Transaction. A list of example types of Cleared Derivatives Transactions appears in Annex A to this opinion.

(ii) Each CDA is governed by New York law.

(iii) Pursuant to the CDA, Cleared Derivatives Transactions become incorporated into the related Covered Base Agreement, which incorporation is accomplished by considering references to "Contracts", "Futures", "Futures Contracts" and similar terms in such Covered Base Agreement to include references to the Cleared Derivatives Transactions. Through this incorporation, the customer grants a security interest to the Clearing Member in all of the customer's rights in the following property, whether at the time of the grant or thereafter existing, and proceeds of those rights:

(A) its Cleared Derivatives Account and all assets credited thereto, including assets held by a DCO, and (2) other property of the customer held in respect of Cleared Derivatives Transactions by or for the Clearing Member, the DCO and any agent acting for the Clearing Member, the DCO or the customer (collectively, "**Cleared Derivatives Credit Support**"); and

(B) its Cleared Derivatives Transactions and all rights to payment thereunder (whether constituting obligations of the Clearing Member or a DCO) (collectively, "**Cleared Derivatives Payment Rights**").

(iv) Pursuant to the CDA, following the occurrence of an Event of Default, the Clearing Member is entitled to set off or apply any obligations owed to the customer under the CDA against the customer's obligation to return any margin transferred to the customer under Cleared Derivatives Transactions ("**Customer Received Margin**").

(v) The Clearing Member is entitled, upon the occurrence of an Event of Default, to designate a date and thereupon cause the liquidation of a customer's Cleared Derivatives Transactions (such rights, the "**Cleared Derivatives Liquidation Rights**"). Cleared Derivatives Liquidation Rights include, without limitation, offsetting transactions ("**Offsetting Transactions**") and sale/novation transactions ("**Sale/Novation Transactions**"). Offsetting Transactions with respect to Cleared

Derivatives Transactions of a customer are one or more cleared derivatives transactions effected in the customer's Cleared Derivatives Account which may be executed with Clearing Member, an affiliate of Clearing Member or an unaffiliated third party that (i) are cleared on the same DCO as the customer's Cleared Derivatives Transactions or related Risk-reducing Transactions[2], (ii) in accordance with applicable DCO rules, regulations and procedures, result in a proportional liquidation of such Cleared Derivatives Transactions and/or Risk-reducing Transactions; and (iii) are not Sale/Novation Transactions. Sale/Novation Transactions with respect to Cleared Derivatives Transactions of a customer are (a) certain transactions consisting of sale, assignment, novation or any similar arrangement in accordance with which Clearing Member, an affiliate of Clearing Member or an unaffiliated third party (each an "**Assignee**") acquires all or part of the Cleared Derivatives Transactions or (b) the obligations of the customer are otherwise substituted or replaced in whole or in part with the obligations of an Assignee (and the old obligations are extinguished). The Clearing Member is entitled to exercise its remedies as a secured party in respect of Cleared Derivatives Payment Rights and to net amounts owing in respect of liquidated Cleared Derivatives Transactions to determine a single lump-sum amount payable in respect of all liquidated Cleared Derivatives Transactions (the "**Cleared Derivatives Net Termination Amount**") and to net such Cleared Derivatives Net Termination Amount against any of the obligations owing under the Covered Base Agreement (collectively "**Cleared Derivatives Netting Rights**").

(vi) Upon the liquidation of a customer's Cleared Derivatives Transactions, the CDA provides the Clearing Member with rights to (a) dispose of or realize on all Cleared Derivatives Credit Support posted by the customer to the Clearing Member in respect of Cleared Derivatives Transactions and net or apply the foregoing or the liquidation value thereof to any obligations the customer owes to Clearing Member under the CDA and (b) net or apply the value of any Customer Received Margin against any obligations owed to the customer under the CDA (such rights, the "**Cleared Derivatives Credit Support Rights**").

The "FIA_ISDA Cleared Derivatives Addendum" in the form published jointly by the FIA and ISDA satisfies the above requirements.

A CDA that does not alone satisfy the above requirements is nevertheless a "CDA" to the extent it is paired with a Covered Base Agreement that supplies any of the otherwise unsatisfied requirements. In addition, a single document that satisfies the above requirements for a Covered Base Agreement and a CDA is both a "Covered Base Agreement" and a "CDA".

2.2 Further Assumptions

In giving this opinion we express no opinion as to any laws other than the laws of Norway as in force of the date hereof and have assumed that no foreign laws affect our opinion.

The opinions set forth herein are based on an analysis of transactions made under a hypothetical Covered Base Agreement and CDA.

We have furthermore assumed:

(i) that the parties to the Covered Base Agreement and CDA are duly organized and validly existing under the laws of their respective jurisdictions;

[2] Risk-reducing Transactions are cleared transactions effected in Customer's Cleared Derivatives Account in order to hedge or reduce the risk of the customer's Cleared Derivative Transactions (or portions thereof) on an individual or a portfolio basis.

(ii) that the entering into of the Agreements, and the transactions made thereunder fall within the capacity and powers of, have been validly authorised and executed by, and are binding and enforceable upon each of the parties thereto under applicable law;

(iii) that each of the transactions (including any posting, pledging or transfer of collateral) concluded pursuant to the Agreements have been confirmed in writing and meet any and all requirements to constitute a transaction registered between the relevant customer and the Clearing Member and/or the DCO as the case may be; and

(iv) that the customer is located in Norway and that any "foreign clearinghouse" (not being a DCO) and any foreign Clearing Member is not incorporated in Norway and does not carry accounts in Norway.

3. BACKGROUND

3.1 Different types of insolvency proceedings under Norwegian law

Norwegian law provides for several types of insolvency proceedings which may apply to a party that has entered into a transaction under a Covered Base Agreement or a CDA. These are:

(i) Bankruptcy

All individuals and legal entities (other than certain financial institutions, please see below, counties, municipalities and certain government enterprises) may be declared bankrupt by a Norwegian court if they are found to be insolvent, cf. Section 60 of the Bankruptcy and Debt Settlement Proceedings Act dated 8 June 1984 No 58 (the "**Bankruptcy Act**"). A motion for bankruptcy may be filed by a creditor or by the debtor himself.

If the debtor is a legal entity, bankruptcy proceedings will, unless the relevant entity is found to be solvent during such proceedings, or a forced composition with the creditors is adopted by the courts (see below), result in the full and final liquidation of the entity.

(ii) Debt settlement proceedings

Insolvent individuals and legal entities may apply to the Probate Court for debt settlement proceedings to be commenced according to Section 1 of the Bankruptcy Act.

Debt settlement proceedings are aimed at reaching a voluntary settlement between the debtor and all his/its creditors.

(iii) Compulsory composition

A debtor being subject to debt settlement proceedings or bankruptcy proceedings may, pursuant to Section 30 or Section 123 of the Bankruptcy Act, apply for a compulsory composition with its creditors provided that the composition proposal involves the payment of a minimum of 25 % of the outstanding debt and the application is supported by at least three-fifths or three quarters in number of the creditors (depending on the dividends proposed) representing at least three-fifths or three-quarters, as the case may be, in value of the debt which will not be paid in full.

(iv) Public administration of financial institutions

Pursuant to Chapter ~~21~~21, sub-chapter II of the ~~new~~ act on financial enterprises and financial groups of 10 April 2015 No. 17 (in Norwegian: "Lov om finansforetak og finanskonsern") (the "**Financial Enterprises Act**") Banks (in Norwegian: "banker"), Credit Firms (in Norwegian: "kredittforetak"), Insurance Companies (in Norwegian: "forsikringsforetak"), Pension Firms (in Norwegian: "pensjonsforetak"), parent companies in a financial group (in Norwegian: "holdingforetak i finanskonsern"), each as defined in the Financial Enterprises Act and certain other credit institutions may not be declared bankrupt or apply for debt settlement proceedings. Such institutions will instead be placed under public administration at the discretion of the Ministry of Finance in accordance with Chapter 21 of the Financial Enterprises Act. The first part of Section 21-11 of the Financial Enterprises Act reads as follows:

"If it has to be assumed that the undertaking cannot meet its liabilities as they fall due and that a sufficient financial basis for continued satisfactory operations cannot be ensured, the Ministry of Finance may make an order for the undertaking to be placed under public administration. The same applies if the undertaking is unable to meet the capital adequacy requirements, unless consent is given for the undertaking temporarily to have lower capital adequacy than stipulated."

Pursuant to the Financial Enterprises Act Section 19-3 (2) neither bankruptcy proceedings nor composition proceedings may be initiated against the Norwegian Banks' Guarantee Fund. Neither is the Norwegian Banks' Guarantee Fund subject to public administration.

The Ministry of Finance may pass regulations on the applicability of Section 21-7 to 21-20 of the Act on Norwegian branches of foreign credit institutions, insurance or pension enterprises cf. the Financial Enterprises Act Section 21-7 (2). No new regulations have been passed, other than a regulation of 21 December 2015 No 1794 adopting all regulations previously passed under the abolished act on guarantee schemes and public administration including, inter alia, the regulations of 12 October 2008 providing that a Norwegian branch of a foreign bank may be placed under public administration in Norway (the "**Branch Administration Regulations**").

The conditions for the Branch Administration Regulations to apply are as follows:

If a bank that has its head office in a foreign country and a branch office in Norway, fails to honour its commitments in Norway upon maturity, and the foreign bank at the same time honours its commitments in the country where it is domiciled or the actions taken by the state where the bank is domiciled in order to assure the continuation of the bank's businesses do not have any effect with respect to the Norway branch, the Norwegian Finance Ministry may place the branch under public administration.

As regards banks with their head office in another EEC-state and a branch office in Norway, the decision may only be made if the Norwegian Finance Ministry finds that it is a necessary and proportionate action in order to assure the compliance with the core principles of EEC provisions similar to EC directive 2001/24/EC.

A decision of public administration will apply to all the bank's assets and obligations in Norway.

3.2 The Creditors' Recovery Act

The Creditors' Recovery Act of 8 June 1984 No 59 (the "**Recovery Act**") governs, inter alia, the status of a debtor's contracts and a creditor's right of set-off in insolvency proceedings, as well as several other relevant issues. The Recovery Act applies to bankruptcy and debt settlement proceedings and, by reference, also to the public administration of financial institutions. Consequently, the legal difference between standard bankruptcy proceedings, debt settlement proceedings, compulsory composition proceedings and public administration of financial institutions is not material to the issues to be discussed in this opinion.

The term "**Insolvency Proceedings**" will therefore apply to all the above mentioned categories of proceedings.

The term "**Insolvency Estate**" used herein includes both bankruptcy and debt settlement estates as well as financial institutions under public administration.

3.2.1 General principles of Norwegian insolvency law regarding the Insolvency Estate's right to adopt the debtor's contractual obligations

The status of a debtor's contracts in Insolvency Proceedings is set out in the Recovery Act Chapter 7.

A main principle in Chapter 7 is that the debtor may not by any agreements, undertakings or waivers limit the rights of the Insolvency Estate under Chapter 7.

Section 7-3 of the Recovery Act reads as follows:

> "*If the debtor's estate is placed under insolvency proceedings, the estate has the right to continue any mutually burdening contracts which the debtor has concluded. The estate may choose whether to continue a contract or not even if the contract has continued to be in effect after the commencement of a preceding debt settlement proceeding. The other party may require the estate to decide whether it will exercise this right or not without undue delay.*
>
> *The provisions of the preceding paragraph do not affect the other party's right to invoke the insolvency as a cause for termination due to the nature of the agreement. Any clause in the agreement which gives the other party a further right to cancel on grounds of the debtor's insolvency is not binding on the estate.*"

With respect to *debt settlement proceedings* Section 7-3a of the Recovery Act governs the status of the debtor's contracts. First paragraph of Section 7-3a has the following wording:

> "*The debtor's contracts continue to be in effect after the opening of debt settlement proceedings. The opening of debt settlement proceedings do not by itself give the other party a right to terminate the contract he has with the debtor. The provisions of Section 7-3 second paragraph apply as appropriate.*"

Hence, the principles regarding continuation of contracts as referred to above will, as appropriate, also apply to debt settlement proceedings.

Consequently, the Insolvency Estate has the right to continue the debtor's mutually burdening contracts (hereinafter the "**Contracts**") provided the debtor's insolvency is not sufficient reason for terminating the contract "due to the nature of the agreement".

A non-exercised option contract will most likely fall outside the scope of Section 7-3, as such contracts are not "mutually burdening" on both parties. However, a non-exercised option contract will be an asset to be included in the Insolvency Estate pursuant to the Recovery Act Section 2-2 and will, if not terminated lawfully, be subject to set-off in accordance with the provisions of the Recovery Act Chapter 8 as outlined in Item 4.2.2 below.

If the Insolvency Estate chooses to perform a non-settled Contract, it will be entitled and obligated pursuant to the Contract terms. The claims of the other party (hereinafter the "**Non-defaulting Party**") under the Contract will then be preferential debt to be honoured by the Insolvency Estate prior to dividends claims, with the exemption for any claims related to performance by the Non-defaulting Party prior to the opening of the Insolvency Proceedings, which will receive dividend only. The Non-defaulting Party may also require that security is posted securing the Insolvency Estate's performance. Whether or not collateral security offered is satisfactory will, if the Non-defaulting Party and the Insolvency Estate do not agree, have to be decided by the courts.

If the Insolvency Estate chooses not to continue a Contract, the Non-defaulting Party will be entitled to terminate and claim any loss caused by the non-performance. Such claim will not be preferential debt in the Insolvency Proceeding.

The Insolvency Estate's right to continue the debtor's Contracts is generally considered not to apply to Contracts that were terminated prior to the opening of Insolvency Proceedings (or in the case of *debt settlement proceedings*; prior to the time a motion for such debt settlement proceedings has been filed with the Probate Court). This applies even if the reason for termination was the financial situation of the debtor, including his insolvency or anticipated insolvency, provided the termination was properly founded in the Contract provisions.

3.2.2 General principles of Norwegian insolvency law regarding right to set-off

The Recovery Act Chapter 8 regulates the creditors' right to set-off claims against the Insolvency Estate in Insolvency Proceedings. The regulations of Chapter 8 may, in certain situations, have implications for the issues discussed in this opinion.

The key provision is Section 8-1. First and second paragraph have the following wording:

"A party that at the commencement of the insolvency proceedings holds a claim against the debtor that may be filed with the insolvency estate may off-set the claim with its full amount in any counterclaim of the debtor that is included in the insolvency estate.

Set-off may not take place if such set-off due to the nature of the claim and counterclaim would have been prevented if the debtor was still solvent. The fact that the counterclaims relate to other means than monies, or become due after the claim is due, does nevertheless not exclude a set-off. Set-off may however not be effected if the counterclaim falls due prior to commencement of insolvency proceedings and the claim falls due after this point of time."

The principal rule of Section 8-1 of the Recovery Act is that a creditor retains the same right to set-off against the Insolvency Estate as he had against the debtor immediately prior to commencement of Insolvency Proceedings.

For Section 8-1 to apply certain conditions must be met. One condition for set-off under Section 8-1 is that the claim and counterclaim must be contracted to be settled with identical means of payment (monies in the same currency) or

deliveries (i.e. the same underlying financial instrument or commodities under derivatives transactions). Thus, claims and counterclaims in different currencies may, as a starting point, not be off-set. However, Section 8-1 second paragraph second sentence provides for an exemption where the Non-defaulting Party has a claim in a foreign currency and the Insolvency Estate holds a counterclaim in Norwegian Kroner ("**NOK**"). All claims against the Insolvency Estate shall be converted into NOK and may be netted with NOK counterclaims. Correspondingly, a claim for monies may not be off-set/netted against a claim for delivery of commodities, with the similar exemption for where the Non-defaulting Party has a claim for delivery of a commodity and the Insolvency Estate holds a counterclaim in NOK. The claim for delivery of commodities shall then be converted into NOK and may be netted with NOK monetary counterclaims.

Special provisions under Norwegian law providing for more extensive set-off arrangements follow under the Securities Trading Act Chapter 14 and the Financial Collateral Act Section 6 (see below).

Another condition under the Recovery Act Section 8-1 is that the claim and counterclaim exist between the same parties at the opening of Insolvency Proceedings. Doubts have been raised whether this excludes the Non-defaulting Party from effecting set-off of claims and counterclaims related to contracts that are continued by the Insolvency Estate pursuant to Section 7-3 of the Recovery Act, see below.

The Recovery Act Chapter 8 also includes certain other conditions for setting off claims and counterclaims, most notably that (i) the counterclaim may not be set-off if the debtor's claim fell due before the opening of Insolvency Proceedings and the counterclaim falls due after the opening of such proceedings, (ii) the Non-defaulting Party may not set-off a counterclaim which has been acquired from a third party within a period of three months prior to the Insolvency Proceedings against a claim the debtor had at the time the Non-defaulting party acquired the counter claim and (iii) the Non-defaulting party may not set-off a counterclaim which was acquired at a time when he realised or should have realised that the debtor was insolvent.

3.2.3 Provisions regarding netting in the Securities Trading Act

The enforceability of netting provisions in Insolvency Proceedings has been a topic of discussion under Norwegian law. The issue has not been raised before the courts, and different positions as to the enforceability have been taken in legal theory. We refer to our principal position that Norwegian insolvency law only allows for close-out agreements with a broader scope of set-off to the extent special provisions apply. The Securities Trading Act of 29 June 2007 no 75 (the "**Securities Trading Act**") is among these special provisions and provides for enforceability in Insolvency Proceedings of close-out netting provisions for certain, but not all, financial instruments.

Sections 14-1 and 14-2 of the Securities Trading Act read as follows:

> "Section 14-1 Applicability
>
> "*This chapter applies to financial instruments mentioned in section 2-2 subsection (5) and to agreements regarding transactions in currencies. The Ministry [of Finance] may decide that this chapter shall also apply to agreements concerning other financial instruments.*"
>
> Section 14-2 Set-off

"*Written agreements between two parties stating that the obligations of the parties under agreements mentioned in Section 14-1 shall be off-set at market value on a continuous basis or upon an event of default shall be applicable regardless of the provisions of Sections 7-3 and 8-1 of the Recovery Act.*"

Section 14-1 of the Securities Trading Act refers to Section 2-2 subsection (5) of the act, and this subsection reads as follows:

"(5) "***Derivative agreements***" *means*

1. options, forwards and futures, swaps, forward interest rate agreements (FRAs), and any other derivative contracts with physical or financial settlement which relate to securities, currency, interests, return measurements, other derivatives, financial indices or financial measurement units,

2. commodity derivatives,

3. credit derivatives,

4. financial difference contracts,

5. other instruments which are not otherwise included by this paragraph but which shares the same characteristics as other derivative financial agreements."

The term "commodity derivative" is defined in Section 2-1 of the Securities Trading Regulations of 29 June 2007 no. 876:

"*(1) By "**commodity derivatives**" as mentioned in section 2-2 fifth paragraph no. 2 of the Securities Trading Act are meant:*

(a) Options, forwards, swaps, forward interest rate agreements and other derivative contracts relating to commodities and which are either settled financially or may be settled financially if one of the parties so requires.

(b) Options, forwards, swaps and other derivative contracts relating to commodities and which may be settled physically, provided that they are traded on a regulated market or in a multilateral trading facility.

(c) Options, forwards, swaps and other derivative contracts relating to commodities and which have the characteristics of other financial derivatives, and which may be settled physically, and which do not have a commercial purpose, cf. EC Regulation no. 1287/2006 article 38 (4). When deciding whether the contracts do have characteristics as other financial derivatives, it shall, inter alia, be emphasised whether settlement takes place through recognised clearing houses or whether they are subject to regular margin requirements, cf. article 38 (1) of EC Regulation no. 1287/2006.

*(2) By "**commodities**" are meant assets as mentioned in EC Regulation no. 1287/2006 article 2 (1).*

*(3) By "**other instruments**" as mentioned in section 2-2 fifth paragraph of the Securities Trading Act are meant:*

(a) Options, forwards, swaps, forward interest rate agreements and any other derivative contracts relating to climatic variables,

freight rates, emission allowances, inflation rates and other official economic statistics and which are either to be settled financially, or may be settled in cash at the option of one of the parties.

(b) Any other derivative contracts relating to assets, rights, obligations, indices or measures and which has the characteristics of other derivative financial instruments. When deciding whether the contracts do have characteristics as other financial derivatives, it shall, inter alia, be emphasised whether settlement takes place through recognised clearing houses or whether they are subject to regular margin calls, cf. articles 38 (3) and 38 (4) of EC Regulation no. 1287/2006."

Please observe that commodity related contracts (including forwards and options) that may be settled physically and are not traded on a regulated market place or in a multilateral trading facility will fall within the scope of Section 14-1 of the Securities Trading Act only if the contracts meet the requirements in EC Regulation no. 1287/2006 article 38 with respect to having the characteristics of other financial derivatives.

The Ministry of Finance has so far not used its authority to supplement the types of agreements mentioned in the Securities Trading Act Section 14-1 with others.

The Securities Trading Act Section 14-2 allows written contractual netting arrangements meeting the conditions of the paragraph to be enforced in Insolvency Proceedings. This will include arrangements on payment netting, netting-by-novation as well as close-out netting arrangements where contracts are terminated and their market values fixed and netted to a single amount to be paid to or collected from the Insolvency Estate. In this respect Section 14-2 allows for both automatic termination and for termination at the choice of the Non-defaulting Party. Within the scope of Sections 14-1 and 14-2 termination may be effected after the opening of Insolvency Proceedings.

A condition under Section 14-2 is that all derivatives transactions covered by the netting agreement shall be debited or credited at "market value" when netted. "Walk away" clauses where the Defaulting Party shall not receive market value are thus not enforceable under Norwegian law. Section 14-2 does not offer further guidelines as how market value shall be calculated or the time frames relevant.

3.2.4 Close-out netting under the Financial Collateral Act

The Financial Collateral Arrangements Act of 26 March 2004 No 17 (hereinafter the "**Financial Collateral Act**") implements Directive 2002/47/EC on Financial Collateral Arrangements (hereinafter the "**Financial Collateral Directive**") and contains provisions protecting netting under certain financial collateral arrangements.

The Financial Collateral Act applies to "financial collateral arrangements" made to fulfil "financial obligations". "Financial obligations" are further defined in Section 2 letter b) as "obligations covered by an agreement on financial collateral arrangement that give right to cash settlement or delivery of financial instruments". In this respect please note that a right to cash settlement will cover all kinds of monetary payment obligations and not only those related to financial instrument transactions.

The collateral object under the Financial Collateral Act must be a "financial security", as further defined in Section 2 of the Financial Collateral Act as "cash deposits, financial instruments and credit claims (in Norwegian: "*gjeldsfordringer*")". "Cash deposits" are further defined as deposits in financial

institutions and similar cash claims in any currency including money market deposits. This means that not all monetary claims on payment (in Norwegian: "*enkle pengekrav*") may be a financial security object. For the avoidance of doubt, cash credited to an account held by an FCM will constitute financial security under the Act. "Credit claims" are defined as monetary claims which arise as a result of credit institutions' granting of credit in the form of loans to debtors which are not consumers.

In this respect, please also note that all kinds of financial instruments and not only transferable securities may serve as financial security. According to the preparatory works of the Securities Trading Act, the term "financial instruments" in the Financial Collateral Act shall be construed in accordance with the Securities Trading Act Section 2-2 first paragraph, having the following wording:

"*(1) "Financial instruments" means:*

1. transferable securities,

2. units in collective investment undertakings,

3. money-market instruments, and

4. derivative agreements.

*(2) "**Transferable securities**" means those classes of securities which are negotiable on the capital market, such as:*

1. shares and other equivalent securities, and depositary receipts in respect of shares,

2. bonds or other forms of securitised debt, and depositary receipts in respect of such securities, and

3. other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement.

*(3) "**Units in collective investment undertakings**" means shares in funds as mentioned in the Mutual Funds Act of 12 June 1981 no. 75 Section 1-2 first paragraph no. 1 and securities comparable with such shares.*

*(4) "**Money-market instruments**" means those classes of instruments which are normally traded in the money market, such as certificates and bank certificates of deposit, excluding instruments of payment.*

*(5) "**Derivative agreements**" means*

1. options, forwards and futures, swaps, forward interest rate agreements (FRAs), and any other derivative contracts with physical or financial settlement which relate to securities, currency, interests, return measurements, other derivatives, financial indices or financial measurement units,

2. commodity derivatives,

3. credit derivatives,

4. financial difference contracts, and

5. other instruments which are not otherwise included by this paragraph but which shares the same characteristics as other derivative financial agreements."

The collateral arrangement can either arise from an individual agreement or a master agreement meeting the requirements under the Financial Collateral Act (see below).

The Financial Collateral Act applies only to such agreements where the collateral provider and/or the collateral taker is a financial institution (bank or insurance company etc.), investment firm, pension fund, UCITS fund and UCITS fund manager or clearing house, as set out in Section 1 of the Financial Collateral Act. It does not apply to agreements where both the collateral provider and the collateral taker is a body corporate, or if either the collateral provider or the collateral taker is an individual. An FCM registered with the CFTC will be regarded as an investment firm under the Act.

Collateral security may as a starting point be provided either in the legal form of (i) transfer of title or (ii) pledge over cash deposits, financial instruments or credit claims. In this respect, the Financial Collateral Act extends the scope of legal forms of and collateral objects as compared to the Norwegian Pledge Act of 8 February 1980 No 2 (the "**Pledge Act**") under which not all financial instruments may be pledged or subject to a title transfer for security purposes. As for financial instruments not recorded in a securities register or documented by negotiable documents, the legal form of transfer of title must be applied, with the exemption for non-registered shares where the form of pledge is also available.

Pursuant to the Financial Collateral Act Section 2 second paragraph, security shall not be regarded as granted prior to establishment of necessary perfection. According to the preparatory works, the Norwegian perfection requirements are assumed to satisfy the requirements of the Financial Collateral Directive. As for close-out netting of claims and contracts, the agreement as such will be the relevant act of perfection under Norwegian law.

Sections 6 and 7 of the Financial Collateral Act read as follows:

"*Section 6 Close-out Netting*

Financial obligations comprised by an agreement regarding financial collateral may be netted in accordance with the provisions ensuing from a written agreement between the parties. A close-out netting agreement may be invoked notwithstanding the provisions of Sections 7-3 and 8-1 of the Recovery Act or Section 26 of the Act relating to Debentures.

"Close-out netting" shall signify that the obligations of the parties on the occurrence of a pre-determined event, shall be established as a pecuniary claim in accordance with agreed criteria, and shall be settled by set-off. The party owing the largest amount is obligated to pay a net amount equal to the difference between the parties' obligations to the other party.

Section 7 Enforcement of a claim

Financial collateral which has been granted may be realised in accordance with a written agreement between the parties.

*If there is no written agreement regarding enforcement, the rules in the Norwegian Enforcement Act of 26 June 1992 No 86 (the "**Enforcement Act**"), the Bankruptcy Act and the Pledge Act apply.*"

The Financial Collateral Act Section 6 allows written contractual netting arrangements satisfying the conditions of such section to be enforced in Insolvency Proceedings including close-out netting agreements where the collateral objects are Transactions and the secured financial obligations (including obligations under Transactions) are terminated or liquidated and

values fixed and netted to a single amount to be paid to or collected from the Insolvency Estate. In this respect Section 6 allows for both automatic termination arrangements and for termination at the choice of the Non-defaulting Party. Section 6 probably also protects close-out arrangements where only one of the parties is entitled to call for close-out in the event of insolvency or default (contrary to the Securities Trading Act Section 14-2).

Within the scope of the Financial Collateral Act Section 6 termination may be effected after the opening of Insolvency Proceedings.

Pursuant to Section 2 second paragraph of the Financial Collateral Act, financial security shall not be regarded as granted prior to perfection. As for bilateral netting of claims and obligations under a financial collateral agreement, the executed written agreement will as a starting point satisfy the perfection requirements under Norwegian law, with the possible exemption for collateral objects that by law are subject to other perfection acts (such as registered securities).

If a financial collateral arrangement is complemented with close-out netting provisions in writing, the Non-defaulting Party can terminate all contracts with the Defaulting Party that fall within the scope of the financial collateral agreement and set off gains and losses on these contracts. Pursuant to the Financial Collateral Act Section 6 this can be done notwithstanding the provisions of Sections 7-3 and 8-1 of the Recovery Act and thus prevent the Insolvency Estate from cherry-picking among the debtor's contracts, i.e. being able to claim selective performance of the profitable contracts and to repudiate the unprofitable contracts.

"Walk away" clauses where the Non-defaulting Party is not under an obligation to pay the net close-out amount owing are prohibited under the Financial Collateral Act. The Financial Collateral Act Section 6 leaves the valuation criteria to the parties' agreement, however limited by the Financial Collateral Act Section 8 stating that the valuation must be conducted in a commercially reasonable manner. Even though the Securities Trading Act Section 14-2 calls for market value, there may be some more flexibility in valuation under the Financial Collateral Act.

4. NETTING UNDER A COVERED BASE AGREEMENT AND CDA

4.1 Assumptions

(i) On the basis of the terms and conditions of a Covered Base Agreement and CDA and other relevant factors, and acting in a manner consistent with the intentions of the Covered Base Agreement and CDA as per the assumptions above, the parties over time enter into a number of Covered Transactions (Futures Transactions and Cleared Derivatives Transactions) that are intended to be governed by the Covered Base Agreement and CDA. The Covered Transactions entered into include any or all of the transactions described in Appendix A to this opinion.

(ii) Some of the Covered Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash.

(iii) After entering into these Covered Transactions and prior to the maturity thereof, the customer, which is organized in Norway, becomes the subject of a voluntary or involuntary case under the insolvency laws of Norway and, subsequent to the commencement of the insolvency, either the customer or an insolvency official seeks to assume the profitable Covered Transactions for the customer and reject the unprofitable Covered

Transactions for the customer or otherwise prevent the exercise of Futures Liquidation Rights, Cleared Derivatives Liquidation Rights, Futures Netting Rights or Cleared Derivatives Netting Rights by the Clearing Member.

(iv) The FCM and the customer have (to the extent relevant) accepted to be bound by the rules of the relevant DCOs.

(v) Under the FCM clearing model, the ultimate counterparties to a derivatives contract that has been novated through the clearing process, are the FCM's customer and the DCO that has accepted the customer's Covered Transactions for clearing. In the context of a Covered Base Agreement and CDA, the customer will interact with the DCOs via its clearing FCM (the Clearing Member), and the Clearing Member will be exposed to the customer: under applicable DCO rules, the Clearing Member must meet the customer's obligations to the DCOs under the Futures Transactions and Cleared Derivatives Transactions it clears regardless of whether the customer itself performs. Thus, the DCOs will have two potential sources of payment under a Covered Transactions — the customer itself and the Clearing Member. The Clearing Member, however, does not guarantee the obligations of the DCOs to the customer.

(vi) ~~(v)~~ Following a customer's default, the Clearing Member (liable to each DCO for amounts owed by the customer under Futures Transactions and Cleared Derivatives Transactions it clears for the customer) would want to reduce its exposure by any amounts owing by all DCOs to the customer. However, while the Clearing Member owes the DCOs (by virtue of its obligation to perform for its customer), the DCOs, with respect to their Covered Transactions with the customer, owe the customer, through the Clearing Member who serves as an intermediary.

4.2 Issues

4.2.1 *Are the provisions of the Covered Base Agreement and CDA permitting the Clearing Member to exercise its Futures Liquidation Rights and Cleared Derivatives Liquidation Rights upon the insolvency of the customer enforceable under the law of Norway*?

As pointed out in section 3.2.2 above, a general condition for setting off claims and counterclaims is that the claims and counterclaims exist between the same parties at the opening of Insolvency Proceedings. Similarly, the Provisions of Chapter 14 of the Securities Trading Act only applies to the termination, set off and netting of transactions between the counterparties to the relevant transactions. Thus, since the Covered Transactions exist between the DCO and the customer, the netting protection in Insolvency Proceedings offered by the Securities Trading Act will not be applicable. However, based on the assumptions in Item 2.1 above, the provisions of the Covered Base Agreement and the CDA will in our opinion represent a Financial Collateral Agreement. Assuming that the customer and/or the Clearing Member is a financial institution (bank or insurance company etc.), investment firm, pension fund, UCITS fund and UCITS fund manager or clearing house, as set out in Section 1 of the Financial Collateral Act, the netting and set off provisions of the Financial Collateral Act would apply. Thus, provided that:

(i) ~~that~~ the Covered Transactions[3] are included in the Futures Credit Support or the Cleared Derivatives Credit Support,

[3] We note that the term Relevant Collateral is defined to include the customer's Customer Contractual Rights. The terminology under the Norwegian Financial Collateral Act is that the Derivative Transactions themselves and not the results from the Transactions need to be provided as financial collateral. See section 3.2.4 above.

(ii) ~~that~~ the Covered Transactions are covered by the definition of financial security set out in the Financial Collateral Act Section 2 (see section 3.2.4 above)

(iii) ~~that~~ the security interest in the Covered Transactions is valid and perfected[4] and

(iv) ~~that~~ nothing in the DCO Rules or the rules of a foreign clearinghouse prevents termination of the Covered Transactions (to which the DCO or foreign clearinghouse is a party) as part of enforcement of the Financial Collateral,

the Covered Transactions may be validly terminated and netted pursuant to Section 6 of the Financial Collateral Act.

Whether the Covered Transactions constitute financial security under the Financial Collateral Act Section 2 must be determined on a case by case basis. By way of example we note that transactions calling for physical delivery of commodities will in most cases fall outside this scope. To the extent the Covered Transactions include both Transactions falling within the scope of the Financial Collateral Act and Transactions falling outside this scope (i.e. that the Covered Transactions do not represent financial security), then the Transactions falling within the scope may be effectively terminated upon insolvency as outlined above and in accordance with the terms and provisions of the agreement between the parties, cf. the Act Section 6.

With respect to Sale/Novation Transactions please note the restrictions set out in Item 6.3.1.10 and 6.3.2.1 below.

4.2.2 *Are the provisions of the Covered Base Agreement and CDA providing for Futures Netting Rights and Cleared Derivatives Netting Rights, including with respect to any cash collateral that is viewed as a title transfer in determining a single lump-sum termination amount upon the insolvency of a customer enforceable under the law of Norway*?

The provisions of the Covered Base Agreement and CDA providing for the netting of termination values and any cash collateral that is viewed as a title transfer in determining a single lump-sum termination amount will be enforceable in relation to all Transactions falling within the scope of the Financial Collateral Act Section 6, provided the netting of termination values of the Transaction is conducted in a commercially reasonable and provided that the posting of cash collateral by way of title transfer is valid and has been duly perfected.

The calculation of the "Close-out Amount" following such termination must be conducted in a "commercially reasonable manner"~~"~~". Any failure by the Clearing Member to apply these valuation rules will, however, in our opinion not impact the effectiveness of the termination, but leave the Insolvency Estate with a monetary claim.

Covered Transactions that do not constitute financial security under the Financial Collateral Act may not be terminated and accordingly not be included in the determination of a single lump-sum.

4.2.3 *Assuming the parties have entered into a Covered Base Agreement and CDA, the customer is insolvent and the Clearing Member has determined a lump-sum termination amount in a currency other than the currency of the jurisdiction in which the insolvent customer is organized:*

~~(a)~~ *(a) would a court in Norway enforce a claim for the net termination amount in the currency in which it was determined?*

[4] This will be a matter under US law or the law of the foreign clearinghouse, cf. Section 6 of this legal opinion.

The payment of the net Termination Amount in a termination currency other than NOK will in our opinion be enforceable under the laws of Norway, with the reservations set out in (b) below.

~~(b)~~ *(b) can a claim for the net termination amount be proved in insolvency proceedings in Norway without conversion into the local currency?*

Pursuant to Section 6-5 of the Recovery Act, the claim will be recalculated to NOK according to the foreign exchange rate at the date a motion for opening of Insolvency Proceedings was filed or the date of the resolution to place the financial institution under public administration (in Norwegian: "*Fristdagen*"). The Recovery Act does not set out rules governing the exchange rate for such conversion, but is likely that the Insolvency Estate will use a reasonable and fair exchange rate offered by a Norwegian bank, or the average exchange rate offered by several banks, at the abovementioned date.

5. NETTING FOR MULTIBRANCH PARTIES

5.1 Assumptions

We have assumed the same facts as set forth in Part 4 above (as applicable) with the following modifications:

5.1.1 When addressing Issue 5.2.1 set forth in Part 5.2 below, we have assumed that a customer that is a bank organized in Norway has entered into a Covered Base Agreement and CDA that permit it to enter into Covered Transactions acting through branches in multiple jurisdictions (referred to herein as a "multibranch basis"). The local bank then has entered into Covered Transactions under a Covered Base Agreement and CDA through the bank in Norway and also through one or more branches located in other countries (as permitted by the bank's Covered Base Agreement and CDA). After entering into these Covered Transactions and prior to the maturity thereof, the local bank becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Norway.

5.1.2 When addressing Issues 5.2.2 and 5.2.3 set forth in Part 5.2 below, we have assumed that a customer that is a bank ("**Bank F**") organized and with its headquarters in a country ("**Country H**") other than Norway has entered into a Covered Base Agreement and CDA on a multibranch basis. Bank F has entered into Covered Transactions under the Covered Base Agreement and CDA through Bank F and also through one or more branches located in other countries (as permitted by the bank's Covered Base Agreement and CDA), including in each case a branch of Bank F located in and subject to the laws of Norway (the "**Local Branch**"). After entering into these Covered Transactions and prior to the maturity thereof, Bank F becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Country H.

5.2 Issues

5.2.1 *Would there be any change in your conclusions concerning the enforceability of netting under the Covered Base Agreement and CDA based upon the fact that the local bank has entered into a Covered Base Agreement and CDA on a multibranch basis and then entered into Covered Transactions under that Covered Base Agreement and CDA through the bank in Norway and also through one or more branches located in other countries prior to its insolvency?*

In our opinion the conclusions expressed above in respect of Norwegian law will not change if a Norwegian bank has entered into Covered Transactions

on a multibranch basis, as the same principles will apply in Insolvency Proceedings regardless of whether a Transaction is entered into by a Norwegian bank through an office of the bank located in Norway or through a branch placed in another jurisdiction.

5.2.2 *Would there be a separate proceeding in Norway with respect to the assets and liabilities of the Local Branch at the start of the insolvency proceeding for Bank F in Country H? Or would the relevant authorities in Norway defer to the proceedings in Country H so that the assets and liabilities of the Local Branch would be handled as part of the proceeding for Bank F in Country H? Could local creditors of the Local Branch initiate a separate proceeding in Norway even if the relevant authorities in Norway did not do so?*

Pursuant to the Convention between the Nordic countries of 7 November 1933, an insolvency proceeding in one of the other Nordic countries will have direct and binding effect on the Norwegian Branch and its assets and liabilities in Norway. There will be no separate proceeding in Norway.

Norway has not entered into similar conventions with any other country. Insolvency proceeding for Bank F in Country H (being a non-Nordic country) will not have direct and binding effect for the assets and liabilities of the Norwegian Branch in Norway.

According to late 19th century case law, the insolvency estate in Country H (not being a Nordic country) may initiate an "Ancillary Proceeding" in Norway in order to protect the estate's assets in Norway against individual creditors. It is however disputed whether the option of Ancillary Proceedings still exist. Furthermore, it is not clear to what extent Norwegian insolvency laws (including the Recovery Act) will apply to such proceedings.

As regards banks with a head office in a foreign country (including the Nordic countries) and a branch office in Norway, the Branch Administration Regulations also apply, please refer to Item 3.1 above.

5.2.3 *If there would be a separate proceeding in Norway with respect to the assets and liabilities of the Local Branch, would the receiver or liquidator in Norway and the courts of Norway, on the facts above, include Bank F's position under a Covered Base Agreement and CDA, in whole or in part, among the assets of the Local Branch and, if so, would the receiver or liquidator and the courts of Norway recognize the netting provisions of the Covered Base Agreement and CDA in accordance with their terms? The most significant concern would arise if the receiver, liquidator or court in Norway considering a single Covered Base Agreement and CDA would require a counterparty of the Local Branch of Bank F to pay the mark-to-market value of Covered Transactions entered into with the Local Branch to the liquidator or receiver of the Local Branch while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Covered Transactions with Bank F under the same Covered Base Agreement and CDA. In considering this issue, please assume that netting under the Covered Base Agreement and CDA would be enforced in accordance with its terms in the proceedings for Bank F in Country H.*

As mentioned under Item 5.2.2 above the bankruptcy estate in Country H may possibly initiate an Ancillary Proceeding in Norway in order to protect the estate's assets in Norway. Our conclusions below as to the consequences of Ancillary Proceedings are based on our interpretation of legal theory and very old case law. We may not state with certainty whether such insolvency proceedings will be accepted and what provisions of the Recovery Act will be applicable.

As a starting point, the Recovery Act would apply to such proceedings. It is however our opinion that the Recovery Act Chapter 7 on continuation of

contracts will not apply to such proceedings. However, lack of case law and certain legal theory supporting a different view leaves some doubt as to this conclusion.

It is in our opinion not clear whether the Recovery Act Chapter 8 will apply to set-off in Ancillary Proceedings. Our view is that these provisions should not apply, in particular not for claims arising out of contracts that by agreement of the debtor is subject to another jurisdiction than Norway.

The Branch Administration Regulations refer to provisions of the Public Administration of Financial Institutions Act which again refer to the Recovery Act. Thus, it is our opinion that the principles described above regarding Ancillary Proceedings will also apply to branches under Norwegian Public Administration according to the Branch Administration Regulations.

It is consequently our opinion that the relevant receiver or liquidator in Norway would include Bank F's position under a Covered Base Agreement or a CDA, in whole or in part, among the assets of the Norwegian Branch, but not apply specific Norwegian limitations on the close-out netting provisions. The insolvency official or court considering a Covered Base Agreement or a CDA would in our opinion not require a counterparty of the Local Branch to pay mark-to-market value of Transactions entered into with the Local Branch to the insolvency official of the Local Branch while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Transactions with Bank F under the same Covered Base Agreement or CDA, if the close-out netting provisions under such agreements would be enforced in accordance with its terms in Country H.

5.2.4 *We would like you to confirm that your answers to Issues 5.2.1, 5.2.2 and 5.2.3 immediately above remain the same, notwithstanding possible actions that could be taken by an insolvency official or court in another jurisdiction where netting may be unenforceable (the "**Non-Netting Jurisdiction**"). Such actions taken by an insolvency official of a Non-Netting Jurisdiction include the following scenarios:*

~~(a)~~ *(a) In the case of an insolvency proceeding for a local bank (a bank organised under the laws of Norway), the local bank, acting on a multibranch basis, has booked Covered Transactions through its home office and one or more branches located in Non-Netting Jurisdictions (the "**Non-Netting Branches**").*

~~(b)~~ *(b) In the case of an insolvency proceeding for a Local Branch of Bank F, Bank F acting on a multibranch basis, has booked Covered Transactions through (i) its home office, (ii) its Local Branch and (iii) one or more Non-Netting Branches in other jurisdictions*.

We believe that our conclusions in 5.2.1, 5.2.2 and 5.2.3above will not change as a result of actions taken by an insolvency official of a Non-Netting Jurisdiction. As stated above, there is no clear precedence providing guidance on these issues. As our reasoning is partly based on the assumption that the close-out netting provisions under the relevant agreements would be enforced in accordance with its terms in Country H, the conclusions are not certain.

5.2.5 Please confirm that where courts in Norway have jurisdiction over the assets of a local bank or a Local Branch, a Covered Base Agreement and CDA that allows a customer to enter into Covered Transactions on a multibranch basis would be treated as a single, unified agreement by a receiver under the laws of Norway regardless of the treatment of the Covered Base Agreement and CDA or Covered Transactions thereunder by an insolvency official in a country where netting may be unenforceable.

In our opinion a multibranch agreement entered into by a Norwegian bank will be treated by Norwegian courts as a single, unified agreement, regardless of the treatment of such agreements or Covered Transactions entered into thereunder by an insolvency official in a jurisdiction where close-out netting may be unenforceable.

Whether netting actually will be enforceable in the Norwegian Insolvency Proceedings will depend on whether the Transactions included are within the scope of the Financial Collateral Act Sections 6 and 7. For other Transactions it depends on the outcome of the considerations dealt with in Items 3.2.1 and 3.2.2 above. In the event that netting provisions are enforced by a Norwegian court, this will in our opinion also include transactions originating from a branch of the Norwegian bank in a jurisdiction where close-out netting may be unenforceable.

6. SECURITY INTERESTS AND COLLATERAL UNDER A COVERED BASE AGREEMENT AND CDA

6.1 Introduction/Fact patterns

In the following, the term "**Security Documents**" shall refer to the (relevant provisions of) the Covered Base Agreement and CDA. The term "**Security Collateral Provider**" or "**Collateral Provider**" shall refer to the customer, and the terms "**Secured Party**" or "**Collateral Taker**" means the Clearing Member. The term "**Collateral**", when used in the following, is meant to refer to any assets in which a security interest is created by the Security Collateral Provider in favour of the Secured Party as a credit support for the obligations of the Collateral Provider under the Security Documents.

As we have been informed that cash collateral may be provided by way of title transfer we shall make the following remarks:

Generally, Norwegian law distinguishes between (i) an ordinary transfer of title/ ownership to assets (ii) transfer of title/ownership of assets for security purposes ("**Security Transfer**" – "Sikringscesjon" in Norwegian), and (iii) a security interest in assets by (standard) form of pledge. Where a transfer of title/ownership has effects that are materially similar to a security interest, the transfer will typically be re-characterised as a Security Transfer. This is in particular so if the purpose of the transfer in real terms is to establish a security interest in the Relevant Collateral. An obligation to return equivalent fungible securities indicates that the arrangement is a Security Transfer. The same applies even if the obligation to return fungible securities is or may be terminated upon default, provided the Transferor holds the market risk for the relevant assets and is credited their market value in a close-out cash settlement.

Norwegian law contains specific provisions on Security Transfers of monetary claims (including cash deposits) cf. the Pledge Act Section 4-9, and the Financial Collateral Act Section 3. The Pledge Act Section 1-2 states that a pledge must be over assets which according to the Pledge Act or other legislation may be subject to a security interest ("**Pledge-able Assets**") in order to be valid. Pledge-able Assets will include, inter alia, monetary claims. Furthermore, the pledge must be perfected as described in the Pledge Act for the relevant Pledge-able Asset (whether registration, possession-taking or notifications or other acts of perfection.)

The common view is that a security interest may not be established by way of an agreed Security Transfer if the relevant assets are not Pledge-able Assets. To illustrate: derivatives contracts calling for "physical" settlement, and which are not registered in Norwegian Registry of Securities (in Norwegian "Verdipapirsentralen" or "VPS") (the "**Norwegian Securities Register**"), are

not Pledge-able Assets, and consequently the common view among Norwegian lawyers is that for such assets, a security interest may not be established by way of Security Transfer.

However, this will not apply to collateral arrangements comprised by the Financial Collateral Act. Section 3 of the Financial Collateral Act states that title transfer financial collateral arrangement shall take effect in accordance with its terms and thus be enforceable provided the Security Transfer is established and perfected in accordance with the requirements for perfecting title to the relevant assets.

Another issue is whether a Security Transfer may be agreed for Pledge-able Assets in general (and not only for assets being monetary claims, cf. Section 4-9) always provided the relevant perfection act is effected. It is our opinion that such a Security Transfer will be valid provided the Security Transfer is established and perfected in accordance with the requirements on pledges in the relevant assets. Consequently, if an agreement in respect of transfer of title/ownership is characterised as a security interest/Security Transfer, the agreement will not be protected against third parties unless the requirements for perfection of a security interest have been fulfilled. Generally, the principles governing the creation and perfection of a security interest and an ordinary transfer of title/ownership are similar and as regards cash deposits in bank accounts, transfer of title is perfected by transfer into an account of the Transferee.

The Financial Collateral Act Section 3 contains provisions meant to establish protection for financial collateral arrangements involving transfer of ownership for security purposes ("**Security Transfer**"), ref. Article 6 of the Financial Collateral Directive. The legislative intent is to implement the Financial Collateral Directive article 6 (1) according to which an agreement on transfer of title to financial collateral for security purposes shall be enforceable in accordance with its terms and no longer be re-characterised, implying that the provisions in the Pledge Act prescribing perfection acts shall not apply to Security Transfers (or to any other transfer of ownership for that matter). The wording of Section 3 may however not be adequately drafted to implement this intent. As there is no case law on this issue, it remains to be seen whether the courts will construe Section 3 in accordance with the intent of the legislator, or whether Security Transfers will still be re-characterised. We believe that it is most likely that the courts will construe Section 3 in accordance with the legislative intent, but until a firm precedence has been established we recommend that similar perfection acts as for security pledge arrangements should be applied if possible (i.e. if the collateral in question consists of pledge-able assets).

The term "**Transaction**" when used in the following is meant to refer to both pledges and Transactions under the relevant Covered Base Agreement and CDA, unless specifically mentioned that it is to refer to either the Pledges or the Transactions alone.

The three principal fact patterns concern (a) whether or not the Location (as defined below) of the customer is in Norway and (b) whether or not the Location of the Relevant Collateral (as defined below) is in Norway.

We have been requested to distinguish between the following three fact patterns:

~~(I)~~ (I) The Location of the customer is in Norway and the Location of the Relevant Collateral is outside Norway.

~~(II)~~ (II) The Location of the customer is in Norway and the Location of the Relevant Collateral is in Norway.

~~(III)~~ (III) The Location of the customer is outside Norway and the Location of the Relevant Collateral is in Norway.

For the foregoing purposes:

(a) the "Location" of the customer is in Norway if it is incorporated or otherwise organized in Norway and/or if it has a branch or other place of business in Norway; and

(b) the "Location" of Relevant Collateral is the place where an asset of that type is located under the private international law rules of Norway.

"Located" when used below in relation to a customer or any Relevant Collateral should be construed accordingly.

6.2 Assumptions

We have with your permission assumed the same facts as set forth in Section ~~(~~(I)~~)~~ above (as applicable) with the following modifications:

(a) All obligations under the Security Documents are bilateral between the parties in the sense that there are only two parties and each is personally liable as regards obligations owing by it that are secured under the Security Documents and is the beneficial owner of such obligations owed to it.

(b) All pledging and transferring is for the Collateral Provider's own debt.

(c) All Documents were entered into prior to the Critical Date (as defined below) as any agreements entered into after such date are not binding on the Estate (as defined below) unless specifically approved by the publicly appointed administrator.

(d) All Transactions were concluded at market terms.

(e) The Collateral Provider has good and valid title to the Collateral and that no person other than the Collateral Provider and the Collateral Taker has any interest in the Collateral and, in particular, that no security interest, other than that created by the Documents, will exist over the Collateral and that no such security interest would be created by operation of the laws of the applicable jurisdiction.

(f) The security interest has not been attached as a whole to all present or future assets of the Collateral Provider, but is only in regard to specified assets provided by the Collateral Provider to the Collateral Taker under the Security Documents.

(g) Neither the security interest nor the underlying obligation which the security interest is securing has become time-barred pursuant to the Norwegian Limitation Act of 18 May 1979 No 18.

(h) Pursuant to the relevant Covered Base Agreement and CDA, the Clearing Member and the customer agree that Futures Credit Support and Cleared Derivatives Credit Support ("**Collateral**") will include cash credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are located or deemed located either (i) in Norway, or (ii) outside Norway ("**Relevant Collateral**").

The customer's right, title and interest in (i) its Futures Payment Rights and Cleared Derivatives Payment Rights and (ii) the proceeds of such rights (which are typically in the form of variation margin payments made by the DCOs to the FCM on a frequent basis) (such right, title and interest in the

Futures Payment Rights, Cleared Derivatives Payment Rights and the proceeds of those rights together, the "**Customer Contractual Rights**"), form part of the Relevant Collateral.

(i) Any securities provided as Relevant Collateral are denominated in either the currency of Norway or any freely convertible currency and consist of (i) corporate debt securities whether or not the issuer is organized or located in Norway; (ii) debt securities issued by the government of Norway; and (iii) debt securities issued by the government of a member of the "G-10" group of countries, in one of the following forms:

(i) directly held bearer debt securities: by this we mean debt securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by a Clearing Member or a DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the Clearing Member or a DCO (that is, not held by the Clearing Member or DCO indirectly with an Intermediary (as defined below));

(ii) directly held registered debt securities: by this we mean debt securities issued in registered form and, when held by a Clearing Member or DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the Clearing Member or DCO so that the Clearing Member or DCO is shown as the relevant holder in the register for such securities (that is, not held by the Clearing Member or DCO indirectly with an Intermediary);

(iii) directly held dematerialized debt securities: by this we mean debt securities issued in dematerialized form and, when held by a Clearing Member or DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the Clearing Member or DCO so that the Clearing Member or DCO is shown as the relevant holder in the electronic register for such securities (that is, not held by the Clearing Member or DCO indirectly with an Intermediary); and

(iv) intermediated debt securities: by this we mean a form of interest in debt securities recorded in fungible book entry form in an account maintained by a financial intermediary (which could be a central securities depositary ("**CSD**") or a custodian, nominee or other form of financial intermediary, in each case an "**Intermediary**") in the name of the Clearing Member or DCO where such interest has been credited to the account of the Clearing Member or DCO in connection with a transfer of Collateral by the customer to the Clearing Member under a Covered Base Agreement and CDA.

The precise nature of the rights of the Clearing Member in relation to its interest in intermediated debt securities and as against its Intermediary will be determined, among other things, by the law of the agreement between the Clearing Member and its Intermediary relating to its account with the Intermediary, as well as the law generally applicable to the Intermediary, and possibly by other considerations arising under the general law or the rules of private international law of Norway. The Clearing Member's Intermediary may itself hold its interest in the relevant debt securities indirectly with another Intermediary or directly in one of the three forms mentioned in (i), (ii) and (iii). In practice, there is likely to be a number of tiers of Intermediaries between the Clearing Member and the issuer of such securities, at least one of which will be an Intermediary that is a national or international CSD.

(j) Due to regulatory requirements, Collateral posted will be held by intermediaries in a way that identifies the Collateral as belonging to customers of the Clearing Member. For example, if the Collateral is held by the Clearing Member or an intermediary of the Clearing Member, that account will show that it is held for customers generally and the Clearing Member's books will show that the collateral is held for the individual customer. If the Collateral is held by the DCO or an intermediary of the DCO, that account will show that it is held for customers generally and the DCO's books will show that the Collateral is held for the individual customer.

(k) Cash Collateral is denominated in a freely convertible currency and is held in an account under the control of the Clearing Member or DCO.

(l) In the case of questions 6.3.2.1 to 6.3.2.4 below, we also assume that after entering into the Covered Transactions and prior to the maturity thereof, an event of default exists and is continuing with respect to the customer (which is located in Norway), and/or the Clearing Member has designated a date to begin exercising its Futures Liquidation Rights or Cleared Derivatives Liquidation Rights (a "**Liquidation Date**") as a result thereof (however, an insolvency proceeding has not been instituted, which is addressed separately in assumption (m) and questions 6.3.3.1 to 6.3.3.3 below).

(m) In the case of questions 6.3.3.1 to 6.3.3.3 below, we assume that a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "**insolvency**") has been instituted by or against the customer (which is located in Norway) and an event of default has accordingly occurred under the Covered Base Agreement and CDA. The different insolvency proceedings under Norwegian law are presented in section 3.1 above.

6.3 Issues

6.3.1 Validity of Security Interests

6.3.1.1 *Under the laws of Norway, what law governs the contractual aspects of a security interest in the various forms of Relevant Collateral under the Covered Base Agreement and CDA? Would the courts of Norway recognize the validity of a security interest created under each Covered Base Agreement and CDA, assuming it is valid under the governing law of such Covered Base Agreement and CDA?*

The parties may freely agree on which law shall govern the contractual ("inter partes") aspects of a security interest validly established.

Assuming that a security interest is valid under the governing law of such Security Document, the courts of Norway would recognise the validity of a security interest created under each Security Document unless deemed contrary to the public policy of Norway.[5] However, in the event that Norwegian law is mandatory for the perfection of security (see Item 6.3.1.2 below on this issue), a security interest must in order to be valid between the parties ("inter partes") comply with the Pledge Act specifying (i) the forms of securities interests acknowledged by Norwegian law and (ii) the perfection acts relevant thereto.

[5] We have not seen examples in practice indicating that the rights and obligations contemplated under the CDA would be considered contrary to the public policy of Norway.

Further, Norwegian mandatory law on enforcement of security/collateral will apply to security interest where the relevant collateral is located or deemed to be located in Norway.

The Financial Collateral Act Section 9 regulates the choice of law for security rights under financial collateral arrangement relating to "registered financial instruments" (that is, directly held dematerialised debt securities and indirectly held debt securities). Security interests in such debt securities shall be governed by the laws of the country in which the relevant account is maintained. This reflects the "PRIMA-rule" or "Place of the Relevant Intermediary Approach" under the Financial Collateral Directive Article 9.

The Financial Collateral Act Section 9 has the following wording:

> "*In respect of financial collateral security in the form of registered financial instruments, any question arising from the legal nature of such collateral security and the effects arising thereof, the relationship to third parties including the collateral provider's insolvency estate, and realisation of such collateral security, shall be governed by the law of the country where the relevant account is maintained. Any rule about choice of law in respect of rejection or transfer [renvoi] shall be disregarded*".

Consequently, the laws of the country where the account is maintained is exclusive in relation to (i) the legal nature and proprietary effects of securities rights in such debt securities including the validity and enforceability of the financial collateral agreements, (ii) the requirements for perfecting a financial collateral arrangement relating to such debt securities with respect to protection against competing third parties including creditors of the Collateral Provider, and (iii) the realisation of collateral in the form of such debt securities.

According to the preparatory works, Section 9 does not regulate the choice of law regarding disputes between the parties ("inter partes") about the interpretation and accomplishment of the financial collateral security arrangement. The parties may consequently and irrespectively of Section 9 freely agree on which law shall govern such matters whilst questions falling within the scope of Section 9 are governed on a mandatory basis by the law in the country where the relevant account is maintained (hereinafter referred to as the "**Account Maintenance State**").[6]

The main principle under the Rome Convention on choice of law in contracts is that the contracting parties are free to agree which law that is to be applied to contractual arrangements including security arrangements. Norway is not part of the Rome Convention but Norwegian law is held to be in line with this principle cf. the preparatory material to the Financial Collateral Act. Consequently, a Norwegian court will recognise as valid a security collateral agreement where i.e. the laws of the Account Maintenance State is to be applied also inter partes.

6.3.1.2 *Under the laws of Norway, what law governs the proprietary aspects of a security interest (that is, the formalities required to protect a security interest in Relevant Collateral against competing claims) granted by the customer under each Covered Base Agreement and CDA (for example, the law of the jurisdiction of incorporation or organization of the customer, the jurisdiction where the Relevant Collateral is located, or the jurisdiction of location of the*

[6] Questions may be raised as to whether the Financial Collateral Act provides a full implementation of the scope of the Financial Collateral Directive Article 9, which may be interpreted as to regulate all aspects in respect of book entry securities, including any inter partes disputes, cf. the expression "legal nature of book entry securities" in Article 9 No. 2 letter (a) interpreted in light of Preamble (8) and (7), the latter referring to the Directive 98/26/EC on settlement finality in payment and securities settlement systems ("**Finality Directive**") with Articles 8 and 9 (2). Norwegian legislators have in the preparatory material expressed the opinion that any and all inter partes matters fall outside the scope of Article 9 of the Financial Collateral Directive even if relating to the "legal nature" or realisation of collateral security, and similarly fall outside the Financial Collateral Act Section 9.

Clearing Member or DCO's Intermediary in relation to Relevant Collateral in the form of indirectly held securities)? What factors would be relevant to this question? Where the location (or deemed location) of the Relevant Collateral is the determining factor, please briefly describe the principles governing such determination under the law of Norway with respect to the different types of Relevant Collateral. In particular, please describe how the laws of Norway apply to each form in which securities Relevant Collateral may be held as described in assumption 6.2(i) above.

As a starting point, the parties will not have freedom to choose which law shall govern the perfection of a security interest, as Norwegian law or another law may be mandatory under the Norwegian international private law doctrine as supplemented by the Financial Collateral Act.

The main principle of this doctrine is that the law of the jurisdiction where the Relevant Collateral is located, or deemed to be located, at the time of entering into the Security Documents governs the perfection of the security interest (the principle of *lex rei sitae*). Therefore, the perfection of a security interest over Relevant Collateral located, or deemed to be located, in Norway must comply with Norwegian law irrespective of whether the Collateral Provider and/or Secured Party is located in Norway or not.

Accordingly, cash (physical notes and coins) and securities in bearer form will be deemed to be located in the jurisdiction where they are physically held.

In respect of dematerialised securities the law of the jurisdiction where the register for the relevant securities is located will be the governing law, i.e. the laws of Norway will apply to securities registered in the Norwegian Securities Register.

Cash credited to an account will be deemed to be located at the place of incorporation of the bank holding the deposits.

The concept of immobilised securities is not a well-known concept under Norwegian law but may be applied to bearer debt instruments located in Norway (where the relevant perfection is notification to the holder of the immobilised securities instructing the holder of the immobilised securities that the Collateral Provider should not have possession of the Collateral).

We assume that the customer's right, title and interest in assets forming part of the Relevant Collateral are registered to/held in Accounts, or are otherwise deemed to be located in the USA, or at any rate outside of Norway. Thus, the debtor (being the DCO, the Clearing Member or a foreign clearinghouse) under such claims will not be located in Norway and there will be no particular Norwegian law issues applicable to perfection of security interests in these rights.

As regards the forms in which securities Collateral (corporate and sovereign debt instruments) are held under the assumptions in Item 6.2(i) above we conclude as follows:

(i) Directly held bearer debt securities will be deemed to be located in the jurisdiction where they are physically held.

(ii) Directly held registered securities are traditionally deemed to be located at the place where the record holder of a (non-electronic) register is domiciled or incorporated, and consequently Norwegian law should apply to securities registered with a Norwegian record holder. The Financial Collateral Act Section 9 is likely to apply to registered securities, and for agreements within its scope, a Norwegian court must apply the laws of the state where the relevant register is maintained. Norwegian law does

not allow for any Norwegian registries of debt securities (contrary to equity securities) but a Norwegian court of law shall accept and apply the relevant law in respect of non-Norwegian registries.

(iii) Directly held dematerialised debt securities are traditionally assessed based on the law of the jurisdiction where the operator of the (electronic) register for the relevant securities is domiciled or incorporated, i.e. the laws of Norway will apply to securities registered in a Norwegian Securities Register. The Financial Collateral Act Section 9 will apply to dematerialised securities. Consequently, for collateral arrangements falling within the scope of this Act the law of the state where the dematerialised register is *maintained* shall be applied. Theoretically, this may be another state than where the operator is incorporated or domiciled.

In Norway there is a single Central Securities Depository (the Norwegian Securities Register) wherein registration is mandatory for shares in Norwegian public limited liability companies and Norwegian bearer debt securities. Norwegian law allows for decentralised recording of shares in limited liability companies (as opposed to public limited liabilities companies) (recording with non-electronic or electronic/ dematerialised registers at the issuer's choice).

(iv) Indirectly held debt securities

In respect of securities located in Norway under the principles outlined in (i) above (directly held bearer securities), the Pledge Act (see its Section 3-2 ref. Section 4-1) will most likely apply irrespective of whether the Intermediary is domiciled or incorporated in Norway or outside Norway.

In respect of securities located in Norway under the principles outlined in (ii) and (iii) above (directly held registered securities or dematerialised securities recorded in a Norwegian securities register) Norwegian law will most likely not apply to securities interests that are recorded with an Intermediary domiciled or incorporated outside Norway. However, the matter is not resolved by Acts or case law and the outcome is not certain, except for collateral arrangements subject to the Financial Collateral Act Section 9 as outlined under Item 6.3.1.1 above. The register of beneficial owners to securities registered in an Intermediary's name in a Nominee Account in the Norwegian Securities Register will in our opinion not be regarded as maintained in Norway unless the relevant intermediary maintains the register of beneficial owners in Norway. To illustrate with an example:

A US Intermediary is recorded nominee holder with the Norwegian Securities Register while maintaining records in the US of the beneficial ownership to these securities. The securities positions of the beneficial owners will here be deemed to be recorded in the US, and the laws of the USA is thus applicable to security collateral arrangements where the beneficial owners are Collateral Providers.

6.3.1.3 *Would the courts of Norway recognize a security interest in each type of Relevant Collateral created under the Covered Base Agreement and CDA? In answering this question, please bear in mind the different forms in which securities Collateral may be held, as described in assumption (i) above. Please indicate, in relation to cash Collateral, if your answer depends on the location of the account in which the relevant obligations are recorded and/or upon the currency of those obligations.*

The courts of Norway will recognise a security interest in each type of Relevant Collateral, assuming that the creation and the perfection are valid under the governing law of the Security Document, or if section 9 of the Financial Collateral Act applies, the law of the Account Maintenance State (cf. Item 6.3.1.1 above), and the law governing the perfection of the security.

As regards cash collateral (credited to an account) Norwegian law will only be relevant where the operating bank is incorporated in Norway and possibly also with a Norwegian branch of a foreign bank. Currency is not relevant.

In respect of the customer's Futures Payment Rights and Cleared Derivative Rights no particular Norwegian law issues applicable to the establishment or perfection of these rights as neither the claims nor the debtors (i.e. the DCOs, the Clearing Member or the foreign clearinghouses) are located in Norway.

Concerning the forms in which debt securities (corporate and sovereign debt instruments) are held under the assumptions above, we conclude as follows in respect of establishment of security interest:

(i) For directly held bearer debt securities located in Norway, security interests must be established by the Secured Party (a) taking possession of the securities or (b) sending notice to a third party in possession (this entity not being the Collateral Provider).

(ii) Norwegian law does not provide for any directly held registered debt securities where the relevant register is located in Norway. Norwegian law will not apply to security interests established in directly registered debt securities recorded with a non-Norwegian record holder.

(iii) For directly held dematerialised debt securities registered in a Norwegian Securities Register, security interest must be established by book-entry in this register on the securities account of the holder.

(iv) In respect of indirectly held debt securities we conclude as follows**:**

For securities deemed to be located outside Norway under the principles outlined in 6.3.1.2(i) to (iii) above, Norwegian law will not offer any procedure for establishing and seeking protection of security interests.

In respect of securities deemed to be located within Norway under the principles as outlined in (i) above (bearer securities), a security interest can be established and protected by notice to the (Norwegian or foreign) Intermediary under the Pledge Act Section 3-2 ref. Section 4-1.

In respect of securities deemed to be located within Norway under the principles as outlined in 6.3.1.2(i) and (iii) above (directly held registered or dematerialised securities in a Norwegian securities register), please be advised that Norwegian law does not contain any procedure for establishing and seeking protection for security interests by recording the interest with an Intermediary as such. Consequently, provided Norwegian law applies, no security interest may be safely established for debt securities recorded with an Intermediary account operator, with the exemption for recording of a security interest on a Nominee Account opened by the Intermediary in the Norwegian Securities Register in respect of securities registered in the Norwegian Securities Register. Norwegian law will, as far as concerns security arrangements under the Financial Collateral Act, not apply to recordings with an Intermediary incorporated or domiciled outside Norway.

6.3.1.4 *What is the effect, if any, under the laws of Norway of the fact that the amount secured or the amount of Relevant Collateral subject to the security interest will fluctuate under the Covered Base Agreement and CDA (including as a result of entering into additional Covered Transactions from time to time)? In particular:*

~~(a)~~ *(a) would the security interest be valid in relation to future obligations of the customer?*

A security interest will be valid in regard to future obligations of the Collateral Provider if the Security Document specifies that future obligations are included. However, if an intervening creditor enforces on the Collateral, then – according to legal theory – the intervening creditor may establish priority prior to any new obligations of the Security Collateral Provider.

~~(b)~~ *(b) would the security interest be valid in relation to future Collateral (that is, Relevant Collateral not yet delivered to the Clearing Member at the time of entry into the relevant Covered Base Agreement and CDA)?*

A security interest in future Collateral will be valid *inter partes* if the Security Document specifies that future Collateral is included, and provided it calls for a future act of perfection of the security interest as acknowledged by Norwegian law (if applicable). However, any future collateral will not be enforceable against third parties unless the relevant perfection act is performed.

~~(c)~~ *(c) is there any difficulty with the concept of creating a security interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Covered Base Agreement and CDA the specific assets transferred by way of security?*

Norwegian law acknowledges the concept of creating a security interest over a fluctuating pool of assets so far as concerns (a) cash in a bank account, (b) monetary claims for (cash) payment from an identified debtor in respect of an identified legal relationship and (c) dematerialised securities registered in a securities account with a Norwegian Securities Register and some other collateral forms less relevant to this opinion. In respect of such Collateral assets, the security interest could be made to cover any Eligible Collateral posted in such an account from time to time.

As for the issues related to possible invalidation upon insolvency of any additional Collateral for old debts, please see under Item 6.3.1.7 below.

~~(d)~~ *(d) is it necessary under the laws of Norway for the amount secured by each Covered Base Agreement and CDA to be a fixed amount or subject to a fixed maximum amount?*

The amount secured by each Security Document must be a fixed amount or subject to a fixed maximum amount in order to obtain perfection for pledge over certain assets under Norwegian law. Hence, if the collateral which is to be posted is deemed to be located in Norway, the secured amount should be stated in the Security Documents as a fixed maximum amount. This also applies to pledge agreements under the Financial Collateral Act. However, such requirements do not apply to security in cash, physical notes and coins and securities in bearer form. If perfection under Norwegian law is not necessary, this requirement does not apply.

~~(c)~~ *(e) is it permissible under the laws of Norway for the Clearing Member to hold Relevant Collateral in excess of its actual exposure to the customer under the related Covered Base Agreement and CDA?*

Yes – a Collateral Taker may hold Collateral in excess of his actual exposure.

6.3.1.5 *Assuming that the courts of Norway would recognize the security interest in each type of Relevant Collateral created under the Covered Base Agreement and CDA, is any action (filing, registration, notification, stamping, notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required in Norway to perfect that security interest? If so, please indicate what actions must be taken and how such actions may differ depending upon the type of Relevant Collateral in questio*n.

The recognition of the security interest in each type of Relevant Collateral will require the actions under Norwegian law as identified below to perfect that security interest, provided the Relevant Collateral, in accordance with the principles set out above under Item 6.3.1.2, are located or deemed to be located in Norway. Apart from such action, no filing, registration, notification, stamping, notarisation or any other order or consent or approval is required in Norway to perfect that security interest.

(i) Cash credited to an account is perfected under Norwegian law by giving notice thereof to the Bank in which the account is located. If the Bank is the Secured Party protection may be established by the parties entering into a set-off agreement.

(ii) Directly held bearer debt securities are perfected by (a) removing the securities from the possession of the Security Collateral Provider and (b) the delivery of the securities to the Collateral Taker or another person or entity which undertakes to possess such securities on behalf of the Collateral Taker, so that the owner/the Security Collateral Provider himself does not have control thereof, cf. the Pledge Act Section 3-2 ref Section 4-1.

(iii) Directly held registered debt securities – See Item 6.3.1.2 above – Norwegian law offers no act of protection related to (non-electronically) registered debt securities. Security interests in debt instruments located in Norway must consequently be (a) related to bearer documents, or (b) related to dematerialised recordings of the instruments in the Norwegian Securities Register or (c) be established as pledge interest in monetary claims under the Pledge Act Section 4-4. A security interest in (existing or future) monetary claims is perfected by notice to the issuer/debtor. No formal or informal recording by the debtor/issuer is required.

A pledge of securities registered in the Norwegian Securities Register is perfected by recording the security interest on the securities account of the Security Collateral Provider with the Norwegian Securities Register where the relevant securities are recorded.

(iv) Indirectly held debt securities:

For securities deemed to be located within Norway under the principles as outlined in 6.3.1.2(i) above (directly held bearer securities), security interests can be established and protected by a notice to the Norwegian or foreign (non-Norwegian) Intermediary (cf. the Pledge Act Section 3-2 ref. Section 4-1) of the security interest and

instructing the Intermediary that the owner of the securities should not have possession of the securities.

For securities deemed to be located within Norway under the principles as outlined in 6.3.1.2(ii) and (iii) above (directly held registered or dematerialised securities in a Norwegian securities register), Norwegian law does not contain any procedure for establishing and seeking protection for security interests by recording the interest with an Intermediary. Consequently, no security interest may be safely established under Norwegian law for debt securities recorded with an Intermediary account operator. An exemption applies however where the Intermediary is holding the securities by registration in an Nominee Account in the Norwegian Securities Register, where protection may be established by recording in the Norwegian Securities Register that the securities are pledged in favour of a named Collateral Taker.

The Financial Collateral Act Section 9 contains a provision where the laws of the jurisdiction of the Intermediary will be decisive, cf. the Financial Collateral Directive Article 9 and our comments above.

6.3.1.6 *If there are any other requirements to ensure the validity or perfection of a security interest in each type of Relevant Collateral created by the customer under each Covered Base Agreement and CDA, please indicate the nature of such requirements. For example, is it necessary as a matter of formal validity that the Covered Base Agreement and CDA be expressly governed by the law of Norway or translated into any other language or for the Covered Base Agreement and CDA to include any specific wording? Are there any other documentary formalities that must be observed in order for a security interest created under each Covered Base Agreement and CDA to be recognized as valid and perfected in Norway?*

Except that the relevant security documents must clearly stipulate that the parties have agreed to enter into a pledge or a security agreement and the collateral actually pledged under the Security Document must be clearly identifiable at any time, and the requirement to specify a fixed or maximum secured amount as set out in Item 6.3.1.4(d) above, there are no documentation formalities or other requirements which must be complied with to establish a valid and perfected security interest in Norway.

6.3.1.7 *Assuming that the Clearing Member has obtained a valid and perfected security interest in the Relevant Collateral under the laws of Norway, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 6.3.1.1 to 6.3.1.6 above, as applicable, will the Clearing Member or the customer need to take any action thereafter to ensure that the security interest in the Relevant Collateral continues and/or remains perfected, particularly with respect to additional Collateral transferred by way of security from time to time when required pursuant to the Covered Base Agreement and CDA?*

(i) General

A valid and perfected security interest will remain so without any further actions being taken.[7]

If additional Collateral is pledged, such additional security interest must be perfected pursuant to the provisions set out in Item 6.3.1.5 above. However, if additional security is provided by transferring

[7] See Item 6.1 above regarding the treatment of title transfer approach under Norwegian law.

additional securities to an account which already is pledged to Party B in its entirety, such additional Collateral will be perfected without the necessity of taking any further action. For the sake of good order; the Security Documents do not in their standard form specify the specific accounts which are pledged.

Any natural person domiciled in Norway or a legal person incorporated in Norway may upon its insolvency be subject to Norwegian insolvency proceedings or similar proceedings. In such proceedings the insolvency estate may, pursuant to the Recovery Act Chapter 5, invalidate any additional Collateral provided by the insolvent Collateral Security Provider for debts/obligations existing at the time when the relevant additional collateral was agreed to ("**old debt**"), provided any of the following conditions are met:

(a) the perfection was finalised within three months prior to commencement of insolvency proceedings, or

(b) perfection was finalised at a time when the Collateral Taker realised or should have realised that the Collateral Security Provider was insolvent, or

(c) a security interest agreed prior to or simultaneously to the secured obligations was perfected within three months prior to insolvency proceeding but the finalisation of the perfection was "unduly delayed" in respect of the establishment of the secured obligations.

In respect of "collateral pools" where Norwegian law allows for perfection of security interests in future assets (most notably the recording of a security interests in an securities account or nominee account in the Norwegian Securities Register or a bank account), transfer of new assets into the pledged account may not be invalidated as Collateral to "old debt", provided that as a matter of the governing law of the agreement the Collateral Provider agreed to provide additional Collateral prior to the secured obligations arising (i.e. by undertaking to provide additional Collateral if the Credit Support Amount should exceed the value of the Collateral in place).

The procurement of additional Collateral in other forms may be invalidated, provided the conditions above are met. In our opinion, this will also apply to security interests established outside of Norway and under non-Norwegian law. As previously mentioned, Norwegian law does not include procedures for establishment of security interests in accounts with an Intermediary, save for recordings of security interest in Nominee Accounts with the Norwegian Securities Register. Consequently, any additional Collateral in the form of new indirectly held securities to be included in another Intermediary account may be invalidated in a Norwegian insolvency proceeding.

(ii) The Financial Collateral Act

The Financial Collateral Act Section 5 offers certain modifications for financial collateral arrangements falling within the scope of the Financial Collateral Act. Such financial collateral arrangement may not be declared invalid or void or be reversed on the sole basis that (i) the financial collateral arrangement has been provided prior to or on the day of the commencement of insolvency proceedings, but prior to the court decision making that commencement, (ii) the financial collateral

arrangement has been provided on the day of, but after the moment of the commencement of insolvency proceedings if the collateral taker can prove that he was not aware nor should have been aware of the commencement of such proceedings, or (iii) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional collateral or substitute collateral (providing collateral for old debt).

However, the Financial Collateral Act Section 5 does not protect against collateralisation that has been intentionally provided to the detriment of the other creditors, cf. the Recovery Act Section 5-9.

6.3.1.8 *Assuming that (a) pursuant to the laws of Norway, the laws of another jurisdiction govern the creation and/or perfection of a security interest in the Relevant Collateral transferred by way of security pursuant to each Covered Base Agreement and CDA (for example, because such Relevant Collateral is located or deemed to be located outside Norway) and (b) the Clearing Member has obtained a valid and perfected security interest in the Relevant Collateral under the laws of such other jurisdiction, will the Clearing Member have a valid security interest in the Relevant Collateral so far as the laws of Norway are concerned? Is any action (filing, registration, notification, stamping or notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required under the laws of Norway to establish, perfect, continue or enforce this security interest? Are there any other requirements of the type referred to in item 6.3.1.6 above?*

The Collateral Taker will have a valid security interest in the Relevant Collateral in so far as the laws of Norway are concerned. No further action is required under the laws of Norway to create, perfect or continue this security interest. As to the enforcement, see Item 6.3.2 and 6.3.3 below.

6.3.1.9 *Are there any particular duties, obligations or limitations imposed on the Clearing Member in relation to the care of the Relevant Collateral held by it pursuant to each Covered Base Agreement and CDA?*

Pursuant to the Norwegian Law dated 15 April 1687 (in Norwegian: N-L 5-8-17) the Collateral Taker shall when in possession treat the Relevant Collateral as if it were the owner of the Relevant Collateral. The Secured Party is responsible for such care and supervision of the cash and securities in bearer form which have been delivered to him, as is required under the circumstances, (cf. the Pledge Act Section 1-7). The Collateral Taker must provide for Relevant Collateral in his possession to be kept in such a way that it will not be *damaged and reduced in value and that the supervision of the Relevant Collatera*l is satisfactory for these purposes. If the Collateral is held by a sub custodian on behalf of the Collateral Taker, the Collateral Taker is still responsible for the Relevant Collateral as if Collateral Taker holds the Relevant Collateral itself.

As regards dematerialised securities registered in the Norwegian Securities Registry there are no special duties, obligations or limitations imposed on the Collateral Taker in relation to the care of the registered Securities as the Collateral Taker is not holding the Collateral (the securities will be recorded at the Securities Account of the Security Collateral Provider or the Nominee Account of an Intermediary).

6.3.1.10 *A Covered Base Agreement and CDA may grant the Clearing Member broad rights with respect to the use of Relevant Collateral. Additionally, the Covered Base Agreement and CDA are subject to the rules of DCOs, which may also grant DCOs similar rights with respect to the use of Collateral that has been*

on-posted from a Clearing Member to a DCO. Such use might include pledging or rehypothecating the securities, disposing of the securities under a securities repurchase (repo) agreement or simply selling the securities. Do the laws of Norway recognize the right of the Clearing Member or DCO so to use such Relevant Collateral pursuant to an agreement with the customer? In particular, how does such use of the Relevant Collateral affect, if at all, the validity, continuity, perfection or priority of a security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the Clearing Member or DCO with respect to its use of the Relevant Collateral under the laws of Norway? In considering the above questions in relation to a DCO, please limit your response to the extent that rights or duties applicable to the DCO under the laws of your jurisdiction are relevant to the validity, continuity, perfection or priority of Clearing Member's security interest.

(i) General

A Collateral Taker with a pledge or security interest may pursuant to the Pledge Act Section 1-10 sell or pledge his pledge/security interest if not otherwise agreed, provided that the secured obligations may also be sold.

This provision does not authorise a sale of the pledged Relevant Collateral. A pledge under Norwegian law is intended to establish a security interest to be exercised upon default of the secured obligations. As a starting point the Collateral Taker may not sell the pledged securities or utilise the securities other than to enforce his rights of coverage (see below).

The Pledge Act Section 1-11 allows the Security Collateral Provider to sell the pledged assets, unless otherwise agreed between the parties (if the Security Taker wishes to avoid a situation where the Collateral Provider sells the pledged assets, appropriate wording should be included in Agreement). An agreement limiting the rights of disposal of the Security Collateral Provider is common for pledges over securities. As far as concerns a pledge in dematerialised securities registered in the Norwegian Securities Register, the parties must register in the relevant account, any limitations to the rights of the Collateral Provider or Nominee Holder in order to limit his/their powers to transfer securities.

Another matter is whether the parties may agree in the Security Documents that the Collateral Taker shall have the right to sell the securities, or to call for a sale to be exercised prior to default. As a starting point, Norwegian law contains strict and mandatory limitations on the rights of the parties in a pledge agreement to enter into agreements in respect to future enforcement proceedings (see Item 6.3.2 and 6.3.3).

Accordingly, the Secured Party may not be able to rely on such right to use the Collateral if the Security Collateral Provider is in default under the Covered Base Agreement or the CDA and mandatory enforcement proceedings may apply. In the event that a Collateral Taker exercises a sale in line with the agreement with the Collateral Provider prior to a default situation or insolvency event, and the received proceeds is netted against a (non-defaulted) claim on the Collateral Provider, a Norwegian court may also conclude that the limitations of the enforcement proceedings should apply, although the conclusion is hard to estimate due to lack of case law and legal theory. If a court decides that the limitations on enforcement proceedings shall apply, the security interest is still valid but the Collateral Taker may then be liable

for any losses caused to the Collateral Provider by the sale (in particular if the latter was objecting to the sale).

The possible exercise by the Secured Party of any agreed rights with respect to a sale of pledged debt securities registered with the Norwegian Securities Register is also dependent on how the security interest is recorded. If the registration of the security interest is recorded on an account held with the Norwegian Securities Register in the name of the Collateral Provider then the Secured Party will not be able to exercise rights to sell the securities, unless a power of attorney for the Collateral Taker to sell is also registered. If the securities are transferred to an account held with the Norwegian Securities Register in the name of the Secured Party, then the Secured Party will be able to exercise the specific rights with respect to disposition agreed upon between the Collateral Provider and the Secured Party, without affecting the validity of the security interest.

Generally, an ordinary pledge agreement where the Collateral Taker is entitled to sell the securities (with an obligation to replace the same amount of (generically identified) securities or the cash value thereof) will most likely be reclassified as a "Security Transfer".[8]

(ii) The Financial Collateral Act

Section 3 of the Financial Collateral Act establishes a legal basis for security collateral arrangements where the Collateral Taker is provided with title to the Collateral ("title transfer financial collateral arrangement") cf. the Financial Collateral Directive Article 6 calling for legal protection of such agreements. The requirements on perfection will be similar in both title transfer financial collateral arrangements and pledge arrangements ("security financial collateral arrangements"; cf. the Financial Collateral Directive Article 2 (1) letter (c)).

The Collateral Taker will under title transfer financial collateral arrangements be free to use or dispose of the Collateral provided, including by lending, selling, pledging or other use of the collateral, while being under an obligation to transfer to the Collateral Provider equivalent collateral to replace the original collateral or the monetary value thereof, all as further agreed upon in the financial collateral arrangement.

Section 4 of the Financial Collateral Act regulates the Collateral Taker's right of use of financial collateral under security financial collateral arrangements. This provision states that the Collateral Provider and the Collateral Taker may freely agree upon the Collateral Taker's right of use of such financial collateral (save for credit claims, which are explicitly excluded from the scope of Section 4 of the Financial Collateral Act) in the security period. Such use may be lending, selling, pledging or other use of the collateral. By exercising a right of use of the collateral provided, the Collateral Taker thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the financial collateral arrangement. The parties may however agree that the obligation to replace equivalent collateral may be fulfilled by other means, for example by setting off the value of the equivalent collateral against or apply it in discharge of the relevant financial obligations. The collateral Taker will have a security interest in the equivalent collateral with the same priority as in the original

[8] See Item 6.1 above regarding the treatment of title transfer approach under Norwegian law.

collateral. i.e., the Collateral Taker's use of the original collateral will not affect the validity, continuity, perfection or priority of the Collateral Taker's security interest in the equivalent collateral.

6.3.2 Enforcement of Futures Credit Support Rights and Cleared Derivatives Credit Support Rights under the Covered Base Agreement and CDA by the Clearing Member in the Absence of an Insolvency Proceeding.

The additional assumption in 6.2(l) above applies to questions 6.3.2.1 to 6.3.2.4 below.

6.3.2.1 *Assuming that the Clearing Member has obtained a valid and perfected security interest in the Relevant Collateral under the laws of Norway, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 6.3.1.1 to 6.3.1.6 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the customer or any other person) or other procedures, if any, that the Clearing Member must observe or undertake in enforcing its security interest in the Relevant Collateral and exercising its Futures Credit Support Rights and Cleared Derivatives Credit Support Rights ("**Credit Support Rights**") as a Clearing Member under each Covered Base Agreement and CDA, such as the right to liquidate Collateral? For example, is it free to sell the Relevant Collateral (including to itself) and apply the proceeds to satisfy the customer's outstanding obligations under the Covered Base Agreement and CDA? Do such formalities or procedures differ depending on the type of Relevant Collateral involved?*

(i) After an Event of Default has occurred, the parties are free to enter into an agreement in respect to the procedures for realisation of any Collateral including allowing the Collateral Taker to sell the Collateral (to itself or others) at a fair market price.

For financial collateral arrangements within the scope of the Financial Collateral Act, Section 7 states that provided (granted) financial collateral may be realised in the way and on the terms which follow from a written agreement between the parties. Relevant ways of realisation are (i) in respect of financial instruments by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligation, and (ii) in respect of cash by setting off the amount against or applying it in discharge of the relevant financial obligation.

(ii) Prior to an Event of Default having occurred the parties may generally not validly enter into any agreement with respect to enforcement procedures (Section 1-3 of the Norwegian Enforcement Act). However, they are allowed to agree that securities listed on an exchange could be sold through an independent broker. The agreement is not enforceable if the securities are de-listed. These limitations does not apply to financial collateral arrangements comprised by the Financial Collateral Act Section 7, cf. above.

(iii) A Collateral Taker with a pledge over a bank account or any other monetary claim will, unless otherwise agreed, be assigned the Collateral Provider's creditor rights from the perfection of the pledge. Upon default the Collateral Taker may claim from the debtor (including the issuing bank) for payment without further notice or steps, provided the claim is due or can be made to fall due.

(iv) Enforcement of security shall in the absence of agreements covered by the Financial Collateral Act follow the procedure of the Norwegian

Enforcement Act ("enforcement through the Enforcement Authorities"): The Collateral Taker has to involve the local enforcement court in exercising its rights as a Secured Party (Collateral Taker). According to the Enforcement Act Section 4-18 the main rule is that the Collateral Taker may ask for the claim to be legally enforced by the local enforcement court two weeks after the Collateral Taker has sent a written notice to the Security Collateral Provider requesting payment. Pursuant to the Enforcement Act a petition for compulsory sale shall be directed to the local enforcement court in the district where the Collateral is situated or will be situated in the immediate future. The petition for compulsory sale shall be directed against the owner of the Collateral. If the Collateral is in the possession of a custodian and not the Collateral Taker, the petition shall also be directed against the custodian.

If the court finds that the conditions for the petition are satisfied the court shall notify the Security Collateral Provider and request him within two weeks to inform the court about conditions that may apply to the enforcement and about any rights to the Collateral that do not appear from the Norwegian Securities Registry, where after the court shall decide whether the compulsory sale shall take place.

(v) In case of a cash deposit with the Collateral Taker (as opposed to a cash deposit with a third party), the Collateral Taker (Secured Party) may net its claim against the Security Collateral Provider. According to Norwegian law the conditions for netting/set-off is that the main claim and the counterclaim are of the same nature (e.g. payment of money) and in the same currency (or in the event of insolvency in the Collateral Provider, the claim of the Collateral Provider may also be netted/set-off if it is in NOK and the counterclaim in another currency). A further requirement for the right of set off to become effective is that the claim and the counter-claim exist between the same parties. It is also a requirement that the counterclaim is due and that the debtor under the claim is entitled to pay. However, please note that after the Critical Date the Collateral Taker is not entitled to include interests in the basis for netting.

6.3.2.2 *Assuming that (a) pursuant to the laws of Norway, the laws of another jurisdiction govern the creation and/or perfection of a security interest in the Relevant Collateral pursuant to each Covered Base Agreement and CDA (for example, because such Relevant Collateral is located or deemed located outside Norway) and (b) the Clearing Member has obtained a valid and perfected security interest in the Relevant Collateral under the laws of such other jurisdiction, are there any formalities, notification requirements or other procedures, if any, that the Clearing Member must observe or undertake in Norway in exercising its Credit Support Rights as a Clearing Member under each Covered Base Agreement and CDA?*

There are no special formalities the Collateral Taker must observe or undertake in Norway, other than set out in Item 6.3.2.1.

6.3.2.3 *Are there any laws or regulations in Norway that would limit or distinguish a creditor's enforcement rights with respect to Relevant Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of Relevant Collateral, or (c) the nature of the creditor or the debtor? For example, are there any types of "statutory liens" that would be deemed to take precedence over a creditor's security interest in the Relevant Collateral?*

Except as discussed above there are no laws or regulations in Norway that would limit or distinguish a creditor's enforcement rights to the Eligible Collateral. There are no statutory security interests that will affect the Eligible Collateral, except that a brokerage firm has a possessory lien in respect of payment for financial instruments purchased on behalf of its clients, the Securities Trading Act Section 12-2).

Further, Section 6-4 of the Pledge Act entitles the insolvency estate to a "statutory security interest" in any asset pledged by the debtor that (i) belongs to the debtor at the commencement of insolvency proceedings and (ii) is subject to seizure by the insolvency estate. The security interest will be equivalent to a maximum of 5 % of the asset's gross value.

The security interest shall cover necessary costs for the insolvency proceedings, and it will be preferential to any other security interest in the asset.

The Pledge Act Section 6-4 does not apply in relation to security financial collateral arrangements comprised by the Financial Collateral Act, cf. the Pledge Act Section 6-4 (9).

(i) The type of Transaction underlying the creditor's exposure will not influence a creditor's enforcement rights with respect to the Eligible Collateral, provided that the underlying transaction creates a valid and binding debt on the debtor.

(ii) The type of collateral will not influence a creditor's enforcement rights with respect to Eligible Collateral. See however above in Item 6.3.2.1 as regards the various enforcement routes available under Norwegian law for security interests in various assets.

(iii) The nature of the creditor or the debtor, being either a private person or a legal entity will not influence a creditor's enforcement rights with respect to the Eligible Collateral, provided that the debtor and the creditor have the legal capacity to enter into a valid and binding security agreement. The scope of the Financial Collateral Act should, however, be recalled.

6.3.2.4 *How would your response to questions 6.3.2.1 to 6.3.2.3 change, if at all, assuming that an insolvency proceeding described in assumption (m) above has occurred with respect to the Clearing Member (notwithstanding that the Covered Base Agreement and CDA may not provide for any events of default in respect of the Clearing Member) rather than or in addition to the customer (for example, would this affect this ability of the Clearing Member to exercise its enforcement rights with respect to the Relevant Collateral)*

The Secured Party's default would in principle not change the answers to these questions.

6.3.3 Enforcement of Credit Support Rights Under the Covered Base Agreement and CDA by the Clearing Member after the Commencement of an Insolvency Proceeding

The additional assumption in 6.2(m) above applies to questions 6.3.3.1 to 6.3.3.3 below.

Please see Item 3.1 above for an outline of relevant Insolvency proceedings under Norwegian law. The Recovery Act governs the relationship between the creditors after the commencement of Insolvency Proceedings. The Recovery Act applies to ordinary bankruptcy and debt settlement proceedings as well as to the public administration of financial institutions subject to this regime.

Consequently, the difference between bankruptcy proceedings, debt settlement proceedings, compulsory composition proceedings and public administration is not material to the issues to be discussed in this opinion. The term "**Insolvency Proceedings**" will thus be applied to all such proceedings.

The term "**Estate**" used herein includes both bankruptcy and debt settlement estates as well as financial institutions under public administration.

The term "**Critical Date**" used herein refers to the date a motion for the opening of Insolvency Proceedings was filed or the date of the resolution to place the financial institution under public administration, always subject to the opening of Insolvency Proceedings being granted.

6.3.3.1 *How are competing priorities between creditors determined in Norway? What conditions must be satisfied if the Clearing Member's security interest is to have priority over all other claims (secured or unsecured) of an interest in the Relevant Collateral, other than claims of a DCO?*

A creditor with a valid and perfected security interest in the Relevant Collateral will rank with priority over all creditors without a security interest in the Relevant Collateral within the value of the Relevant Collateral or the stated maximum secured amount, as applicable.

The priority between creditors with competing valid and perfected security interests in the Collateral will be determined by the time of perfection, unless another ranking is agreed among the security interest holders. A creditor who knew about an existing but unperfected security interest when perfecting and acquiring priority for its own security interest may however have to yield priority to such security interest when later perfected.

6.3.3.2 *Would the Clearing Member's right to enforce its security interest in the Relevant Collateral and exercise its Credit Support Rights under each Covered Base Agreement and CDA, such as the right to liquidate the Relevant Collateral, be subject to any stay or freeze or otherwise be affected by commencement of the insolvency (that is, how does the institution of an insolvency proceeding change your responses to questions 6.3.1.7 and 6.3.1.8 above, if at all)?*

Pursuant to the Bankruptcy Act Section 17 the Collateral Takers' right to call for enforcement through the Enforcement Authorities (see Item 6.3.2.1 above) will be subject to a stay or freeze for six months from the commencement of debt settlement proceedings. The stay will not apply to enforcement as referred to in Item 6.3.2.1 (ii) or (iii). Freeze does not apply if the Estate consents.

The opening of bankruptcy proceedings will prohibit a Collateral Taker from enforcing his rights under the pledge through the Enforcement Authorities. No such stay will apply to the "private" enforcement actions referred to in Item 6.3.2.1 (ii) or (iii) or a financial collateral arrangement within the scope of the Financial Collateral Act Section 7.

The Bankruptcy Act Sections 117b and 117c contain provisions for a formal transfer of title of pledged assets from the bankruptcy estate to the pledgee, for his subsequent realisation (in Norwegian: "*abandonering*"). A transfer decision, which is made by the bankruptcy estate, is not needed for the pledgee to exercise "private" enforcement as referred to in Item 6.3.2.1 (ii) or (iii).

Pursuant to the Bankruptcy Act Section 117a the bankruptcy estate may in general sell pledged assets as part of a sale of the whole business of the

debtor or a business line, provided a joint sale is expected to give higher proceeds. The pledgee will retain his right to the proceeds for the relevant assets. Section 117a is of less practical importance to security interest in cash and financial instruments, as the conditions for including financial instruments and cash in a joint sale will normally not be met.

6.3.3.3 *Will the customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Relevant Collateral made to the Clearing Member during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference" (however called and whether or not fraudulent) in favor of the Clearing Member or on any other basis? If so, how long before the insolvency does this suspect period begin? If such a period exists, would the substitution of Relevant Collateral by the customer during this period invalidate an otherwise valid security interest if the substitute Collateral is of no greater value than the assets it is replacing? Would the posting of additional "variation margin" (an amount that reflects a change in the mark-to-market value of one or more Covered Transactions) during the suspect period be subject to avoidance, either because the Relevant Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?*

(i) "Suspect periods"

The Recovery Act Section 5-7 states that the court may invalidate a security interest given less than three months prior to the Critical Date if (a) the security interest is given as security for debts existing before the security was agreed to or (b) the perfection was not obtained as soon as possible (In Norwegian: "*uten unødig opphold*") after the debt was contracted. See Item 6.3.1.7 above for details.

The Recovery Act Section 5-9 regulates voiding of a security interest created less than ten years prior to the Critical Date that improperly favours the Collateral Taker over other creditors, improperly deprives other creditors of compensation or improperly enhances the debts of the Security Collateral Provider. Any such transaction may be voidable by the Estate if (a) they are regarded by the courts as improper vis-à-vis other creditors of the Security Collateral Provider, and (b) the Collateral Taker when the security interest was created, knew or ought to have known of (i) the Collateral Provider's financial difficulties at that time and (ii) the circumstances that made the creation of the security interest improper.

(ii) Substitution of Collateral

According to Norwegian legal theory a substitution of Collateral by a counterparty during the three-month suspect period (Section 5-7) would not invalidate an otherwise valid pledge if the "new" security interest is established no later than the old security interest was terminated or released. However, the security interest in the substitute Collateral will be limited to the value of the "old" Collateral.

A substitution of Collateral may invalidate an otherwise valid pledge if the provisions of Recovery Act Section 5-9 are fulfilled. This is not likely to happen where the value of the substitute Collateral is equal to that of the substituted Collateral.

(iii) Additional Collateral:

Posting of additional Collateral during the three month suspect period will be invalid save in respect of recognised "pools" of collateral (see Item 6.3.1.7 above for details), but will have no effect on security interests perfected prior thereto.

7. MISCELLANEOUS

(a) *Would the parties' agreement on governing law of each Covered Base Agreement and CDA and submission to jurisdiction be upheld in Norway, and what would be the consequences if they were not?*

The choice of New York law as the governing law and the submission to a jurisdiction other than Norway will be recognised by Norwegian courts as the law of the contract and the jurisdiction for disputes related thereto if not deemed contrary to public policy in Norway.

As regards the perfection of the security interest a choice of foreign law will only be upheld in Norway if the Collateral is located within the jurisdiction of the chosen law, cf. Item 6.3.1.2 above. If Norwegian law is mandatory for perfection of the security interest, the security interest will only be recognised by Norwegian courts as valid inter partes if the form of security interest in question is recognised by Norwegian law, cf. Item 6.3.1.1 above.

(b) *Are there any other local law considerations that you would recommend the Clearing Member to consider in connection with taking and realizing upon the Relevant Collateral from the customer?*

There are no other local law considerations that we would recommend the Collateral Taker to consider.

(c) *Are there any other circumstances you can foresee that might affect the Clearing Member's ability to enforce its security interest in Norway?*

A Norwegian court may at its discretion require translations into Norwegian of key documents in any court proceeding.

A security interest may be annulled if the Collateral is lost, damaged or becomes subject to compulsory acquisition. If the attached property is accidentally lost or damaged, the owner sustains the loss of his property and the Secured Party sustains the loss of security interest in the Collateral, except as otherwise agreed between the parties (cf. the Pledge Act Section 1-8.) In the case of compulsory acquisition of the Collateral from the Norwegian authorities, the security interest over the Collateral will be annulled and the Secured Party will instead have a security interest in the consideration paid for the Collateral. Such acquisition would typically affect real property and not assets in the form of the Relevant Collateral.

8. QUALIFICATIONS

The foregoing opinion is subject to the following general qualifications:

(a) Certain financial institutions may not post their assets as collateral without giving notice to or obtaining consent from the Norwegian Financial Supervisory Authority.

(b) The availability in Norwegian Courts of equitable remedies such as injunction and specific performance is restricted.

(c) Norwegian courts may be expected to award judgments expressed in foreign currencies, but in enforcement proceedings in Norway of a payment

order by the execution authorities, the debtor has the right to settle the awarded amount by payment in Norwegian Kroner, being the legal tender in Norway. In this event, the exchange rate at the Critical Date will be issued.

(d) Pursuant to the Norwegian Agreement Act of 1918 (in Norwegian: "*Avtaleloven*"), Section 36, a contract or a contract term may be modified or set aside by a court if it is regarded as unreasonable. When deciding this matter the court would typically have a view to the relationship between the parties. Normally the provision would only be applied in relation to consumers, but it is, however, also applicable to commercial transactions.

(e) Where any party to an agreement is vested with a discretion or may determine an issue in its sole discretion, Norwegian law may require that such discretion is exercised reasonably and/or based on justifiable grounds.

(f) A Norwegian court may refuse to hear a case in Norway if proceedings that have led or may lead to a judgment which is enforceable in Norway have been initiated in another jurisdiction.

9. NEW LEGISLATION/DEVELOPMENTS

Subject to the below, we do not know of any developments pending as a result of which the current regulatory or legal environment in Norway may be expected to change in the foreseeable future with respect to the matters dealt with in this legal opinion.

A new act amending the Bankruptcy Act (as defined below) by introducing a new part with provisions regarding cross-border insolvency was passed on 27 June 2016, but has not yet come into effect. When made effective, our opinion should be updated to reflect certain of the new rules briefly set out below and which are relevant in relation to Item 3 (*Background*) and Item 5.2 relating to close-out netting for multibranch parties. The new rules, as briefly described below, will not have any material impact on our opinions and conclusions set out herein.

When the new act is made effective, insolvency proceedings may be opened in Norway against a debtor which has its main interests (in Norwegian: *hovedinteresser*) in Norway, regardless of whether or not the debtor is incorporated in Norway. If the debtor is a Norwegian registered company, there will be a presumption for its main interests being located in Norway, so the new rules are not expected to have any remarkably impact on Norwegian court's jurisdiction. The Norwegian courts' jurisdiction will however be expanded to include opening of insolvency proceedings against a Norwegian foreign entity registered with the Norwegian Register of Business Enterprises which has its main interests in another country when certain criteria are met, excluding banks and other financial enterprises which cannot be declared bankrupt under the Bankruptcy Act cf. the Financial Enterprises Act with appurtenant regulations. Norwegian law will be applicable to such proceedings and the proceedings will be limited to the entity's assets in Norway.

Furthermore, if insolvency proceedings have been opened against a foreign entity in a foreign jurisdiction , then any limitation imposed on the debtor's right to dispose over its assets and the insolvency estate's right to seizure shall be equally applicable and recognised in relation the debtor's assets in Norway provided that (i) the foreign jurisdiction recognises similar proceedings opened in Norway (ii) the foreign entity is a legal entity which has its main interests (in Norwegian: *hovedinteresser*) in that foreign jurisdiction, (iii) the insolvency proceedings are (a) collective, (b) has been opened with effect for all of the foreign entity's assets and (c) involves that limitations have been imposed on the foreign entity's right to dispose over its assets, in whole or in part and (iv) a

person or a governing body has been appointed to manage or dispose of the foreign entity's assets or to supervise the management of the foreign entity's assets and interests. Questions regarding for example legal protection, netting and voidance shall be governed by Norwegian law, with certain modifications, and the question of which effect a decision made by the courts of the foreign jurisdiction will have in relation to the debtor's assets in Norway will therefore to a large extent be decided by Norwegian courts. These rules will not however apply in relation to (i) insolvency proceedings against credit institutions, insurance companies, pension firms, investment firms or other entities which as comprised by directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (as amended), UCITS-funds or alternative investment funds when the insolvency proceeding has been opened in another country which is subject to regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings or (ii) insolvency proceedings against banks, other credit institutions, pension firms or insurance companies opened in any other state.

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This opinion is given for the sole benefit of the International Swaps and Derivatives Association, Inc. (ISDA) and the Futures Industry Association (FIA) and their members, and may not be relied upon by any other person, unless we specifically agree with that person in writing.

Notwithstanding the foregoing, ~~the members of~~ ISDA, FIA and/or ~~FIA~~both their members may provide a copy of this opinion to their regulators, supervisors and advisors for the purpose of information only. However, we accept no responsibility or legal liability in relation to the contents of this opinion to any person other than ISDA and FIA, the members of ISDA and/or FIA and such persons as we have agreed that may rely on this opinion.

Yours sincerely,
Advokatfirmaet Wiersholm AS

Kaare P. Sverdrup

~~[ ]~~ ~~[ ]~~

APPENDIX A

AUGUST 2015

CERTAIN TRANSACTIONS THAT MAY BE CLEARED UNDER THE COVERED BASE AGREEMENT AND THE CDA

We have been instructed to include the following potential Covered Transactions. The respective types of transactions must be analysed in light of the analysis in the legal opinion. Netting will be applicable to the extent the transactions fall within the scope of the financial collateral act.

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price, and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index based on the price of one or more commodities.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "**Reference Obligation**") issued, guaranteed or otherwise entered into by a third party (the "**Reference Entity**") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit

protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("**Deliverable Obligations**") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an

equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A deliverable or non-deliverable transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "**Fund Interest**"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such

redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "**Reference Obligation**") issued, guaranteed or otherwise entered into by a third party (the "**Reference Entity**"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

[9]

Certain Counterparty Types	Covered by opinion	Comment
Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a "commercial bank" or, if its business also includes investment banking and trading activities, a "universal bank". (If the entity only conducts investment banking and trading activities, then it falls within the "Investment Firm/Broker Dealer" category below.) This type of entity is referred to as a "credit institution" in European Community (EC) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (UK)).	Yes	Includes Banks/Credit Institutions licensed under the Financial Enterprises Act. Banks incorporated in Norway may be either a savings bank organised as a self-owning institution or a commercial bank organised as a public limited liability company ("allmennaksjeselskap"/"ASA") under the Public Limited Liability Companies Act of 13 June, 1997 No. 45. A Bank which is a subsidiary of a financial group, as defined in the Financial Enterprises Act Section 1-4, may alternatively be organised as a private limited liability company ("aksjeselskap"/"AS") pursuant to the Financial Enterprises Act. A Bank must include the term "bank" in its name. If a Bank is established as a savings bank, it must include "sparebank" (savings bank) or similar combinations with the word "spare" (saving) and "bank" in its name in its name. Credit companies (in Norwegian: "*kredittforetak*") which is a sub-category of Norwegian Credit Institutions licensed under the Financial Enterprises Act to issue covered bonds are not covered by this legal opinion.
Central Bank. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).	No	Requires further legal analysis.
Corporation. A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.	Yes	Provided that the entity is organised as a limited liability company ("aksjeselskap"/"AS") under the Limited Liability Companies Act of 13 June, 1997 No. 44 or a public limited liability company ("allmennaksjeselskap"/"ASA") under the Public Limited Liability Companies

[9] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

		Act of 13 June, 1997 No. 45.
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.	Yes	Provided that the entity is organised as a limited liability company ("aksjeselskap"/"AS" under the Limited Liability Companies Act of 13 June, 1997 No. 44 or a public limited liability company ("allmennaksjeselskap"/"ASA") under the Public Limited Liability Companies Act of 13 June, 1997 No. 45. Other types of entities require further legal analysis.
Insurance Company. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	Yes	Includes Insurance Companies licensed under the Financial Enterprises Act. Insurance Companies incorporated in Norway must, according to Norwegian law, be organised as "AS"," ASA" or "gjensidig selskap"" (mutual company), and having "forsikring" and "AS", "ASA" or "gjensidig(e)" as part of its registered name.
International Organization. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.	No	Requires further legal analysis.
Investment Firm/Broker Dealer. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.	Yes	Includes Investment Firms/Broker Dealers as defined in the Securities Trading Act of 29 June 2007 No. 75. Investment Firms/Broker Dealers must according to Norwegian law be incorporated as "AS" or "ASA".
Investment Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits	No	Requires further legal analysis.

or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.		
Local Authority. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.	No	Requires further legal analysis.
Partnership. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).	No	Requires further legal analysis.
Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of	No	Requires further legal analysis.

the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.		
Sovereign. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").	No	Requires further legal analysis.
Sovereign Wealth Fund. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term "Sovereign Wealth Fund" excludes a Central Bank.	No	Requires further legal analysis.
Sovereign-Owned Entity. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see "Local Authority").	Yes	Provided that the entity is organised as a limited liability company ("aksjeselskap"/"AS") under the Limited Liability Companies Act of 13 June, 1997 No. 44 or public limited liability company ("allmennaksjeselskap"/"ASA") under the Public Limited Liability Companies Act of 13 June, 1997 No. 45.
State of a Federal Sovereign. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local	No	Such entities do not exist in Norway.

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